

HEARING ON INTERSTATE USE TAX COLLECTION

Y 4. SM 1/2: S. HRG. 103-681

Hearing on Interstate Use Tax Colle...

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS

UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

HEARING ON INTERSTATE USE TAX COLLECTION

WEDNESDAY, APRIL 13, 1994



Printed for the Committee on Small Business

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HEARING ON INTERSTATE USE TAX COLLECTION

WEDNESDAY, APRIL 13, 1994

U.S. SENATE,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to notice, at 2:05 p.m., in room SR-428A, Russell Senate Office Building, Hon. Dale Bumpers, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. DALE BUMPERS, A U.S. SENATOR FROM THE STATE OF ARKANSAS

The CHAIRMAN. Today, this Committee considers the impact of the fairness of the mail order industry's exemption from sales and use taxes on sales made across State lines. The sales and use tax exemption stems from two Supreme Court decisions. In the first case, *National Bellas Hess v. Department of Revenue* in 1967, the Court ruled that States could not require out-of-State mail order companies to collect use taxes because it would both violate the Constitution due process clause and create an impermissible burden on interstate commerce.

But in 1992, the Court ruled in *Quill Corporation v. North Dakota* that a State's imposition of tax collection requirements on out-of-State mail order companies would no longer be considered a violation of the due process clause, but that it would still constitute a burden on interstate commerce. As the court acknowledged, however, Congress has the power to authorize that burden if it so chooses. My bill is designed precisely to do that—authorize that burden.

The tax collection exemption enjoyed by mail order companies creates a number of problems. First, it gives them a significant price advantage over local retail competitors. This hearing is not intended as a national forum to rail against mail order catalog companies. There are many fine mail order firms which offer many fine products. But that does not mean the Federal Government should allow them a special advantage over their local Main Street competitors.

Under current law, that is exactly what is happening. Main Street businesses in my home State and the home States of every Senator on this Committee face an unfair competitive disadvantage from companies located outside their States. In many cases, this price advantage may not seem significant, but for large or multiple purchases, the difference is often substantial and results in the loss of a sale which would otherwise benefit the local economy.

The second problem with exempting mail order companies from collecting taxes is that it creates a loophole that is draining State and local revenues. The Advisory Committee on Intergovernmental Relations estimates that the revenue loss is around \$3 billion a year. The Direct Marketing Association says that it is less—around \$1.3 billion a year. Regardless of whose numbers you use, the loss is substantial.

A third problem with the exemption is that the consumers are misled into believing that mail order sales are tax free. As an illustration of this problem, I am submitting a statement from Mrs. Joyce Maloney of Bonita Springs, FL, who could not be with us today. A few months ago a North Carolina furniture company, one that operates essentially like a mail order company, told Mrs. Maloney that her purchase would be tax free if the merchandise were delivered to Florida. Eight weeks after receiving her purportedly tax-free furniture, Mrs. Maloney learned that she was required to pay \$226 in taxes to the State of Florida. She was understandably surprised and upset.

Most States already have a tax on mail order sales, but it is the responsibility of the individual purchaser to pay the tax directly to the state. Most consumers don't know the tax exists, don't pay it, and there really is no suitable way to enforce it. This problem requires congressional action. The Tax Fairness for Main Street Business Act, which I recently introduced, would allow the States to require mail order companies to collect taxes in the same manner that retailers do now. Some mail order companies collect taxes on their sales now, so the argument that it is not doable just does not wash.

Three other members of this Committee, Senators Heflin, Kempthorne, and Levin, have cosponsored this bill, and I hope other Committee members will consider doing the same. This bill has been referred to the Finance Committee, and Senator Moynihan has told me that he will have a hearing on this at the earliest possible time.

Today, we will hear from witnesses representing the retail industry, the mail order industry, local government, and education. Their testimony will provide valuable information about the dimensions of the problem before us, and I appreciate their taking the time today to be with us.

In addition to that, I have a statement here from Senators Levin and Heflin, who asked me to put their statements in the record. I know Senator Levin wanted to be here for the witness from Michigan, and he may appear later on.

[The prepared statement of Ms. Maloney follows:]

PREPARED STATEMENT OF JOYCE MALONEY

Mr. Chairman, good morning. My name is Joyce Maloney, and I am a resident of Bonita Springs, FL and Naperville, IL. I am pleased to have the opportunity as a private citizen to present this statement to the Committee and appreciate Sen. Bumpers' efforts in introducing S. 1825 and the Committee's efforts in examining the problems associated with retail companies who do not collect sales tax on interstate sales.

The purpose of my statement is to illustrate to the Committee a situation faced by my husband and me in purchasing furniture to decorate our recently purchased home. My husband, Dale, and I recently purchased a condominium in Bonita Springs, FL. (We also maintain a residence in Naperville, IL.) In conversations with

friends, many pointed out to us that a trip to the North Carolina furniture outlets would be in order as we needed to purchase many items to furnish the new condominium. After some research, my husband and I made the trip to North Carolina and were extremely happy not only with the wide selection of merchandise available but also with the prices quoted.

After much searching, we selected a number of items to purchase in one particular furniture gallery and signed a purchase contract with the sales agent. During his "sales pitch" to us, the sales agent stated that since the furniture was to be delivered to our home in Florida that no sales tax was to be applied to the sale. And besides, as he told us, "the delivery charge you are paying will offset the sales tax."

My husband and I returned to our home in Florida, and approximately 10 weeks after purchasing our furniture in North Carolina several of the pieces were delivered to our home in Florida. After inspecting each piece, I signed the delivery invoice and the furniture was ours. However, the biggest surprise was yet to come.

Approximately 8 weeks after taking delivery of the first pieces of furniture, we received an invoice for \$226.26 from the Florida Department of Revenue for payment of Florida sales tax on the furniture recently delivered to our home. (Sales tax was also calculated on the freight charges for delivering the furniture.) It seems that the driver who delivered our furniture stopped at the highway weigh station upon entering the State of Florida (as he is required to do). The official at the weigh station noted that the invoice for our furniture did not indicate that we had paid Florida sales tax on the shipment, so he promptly made a photocopy of the invoice and forwarded it to the Florida Department of Revenue who then forwarded a tax bill to us.

I find this situation very confusing and misleading. As I mentioned previously, the sales agent in North Carolina stated that no sales tax was to be added on to the sales contract. Although he indicated that he was not required to collect the sales tax, he did not indicate to me that I was required to pay sales tax on these purchases to the State of Florida. I also find misleading his statement that the delivery charge will offset the sales tax, because, in actuality, the delivery charge did not offset anything, and, in fact, I was assessed sales tax on the delivery charge.

And, finally, had I been aware of the trouble I would be going through in purchasing this furniture, my husband and I would have saved ourselves alot of anguish and just bought furniture in the State of Florida!

Mr. Chairman, my husband and I are law abiding citizens who faithfully pay our taxes as required by the government. Although we are sometimes dismayed by the amount of taxes we are required to pay, we are aware that these taxes fund important things in our lives—like schools for our children, police and fire protection, and other services we rely on daily. We shop for groceries, clothing, and other items in stores in both Florida and Illinois and pay the sales tax on these purchases without giving a second thought. Yes, I thought it was unusual that we were told that sales tax did not have to be applied on our furniture purchases, but what I found more disturbing was the fact that the sales agent conveniently failed to mention that it was our obligation, not his, to pay the tax to the State of Florida. Receiving this invoice from the Department of Revenue reflected upon us that we had done something wrong, when in reality we were just the victims of a lack of correct information.

And, as an aside, we did not receive all the furniture we ordered in the first shipment because several pieces had to be ordered from the factory. The driver who delivered the additional pieces of furniture was obviously aware of what would occur once he stopped at the weigh station at the Florida border because he stated that sometimes customers offer to "make a deal" if he "took care of" the shipping invoice for our furniture.

Mr. Chairman and Members of the Committee, it is time to correct this situation and bring about truth in the marketplace. As I stated above, I have no problem in paying sales tax that is due on any purchase I make. But what I despise is receiving inaccurate (and fraudulent) information regarding my obligations to remit sales tax. It is time to shift the sales tax remittance burden from the consumer to the retail company—so that everyone plays, and pays, by the same rules.

[The prepared statements of Senators Levin and Heflin follow:]

PREPARED STATEMENT OF SENATOR CARL LEVIN

Mr. Chairman, I want to thank you for holding these hearings today on S. 1825, the Tax Fairness for Mainstreet Business Act. In particular, I want to thank you for extending an invitation to Mr. Jerry Engle, who is President of Computer Products & Resources of Grand Rapids, MI, to offer testimony at today's hearing.

The basic issue underlying this legislation is one of fostering an even playing field for small businesses whose customers come off the street to make purchases. As ordering by mail has become more common, these small businesses are facing stiffer unfair competition from mail order purchases. It is unfair because although state taxes are owed in-state on delivery of those mail order purchases, the reality is that most mail order purchases are frequently, in effect, sales tax free. That's because unless the tax owed is not assessed at the time of the purchase, "after-the-fact" compliance is spotty, at best.

As a result, business is increasingly being diverted from mainstreet firms to out-of-State mail order firms. Of course, for some purchases the item cost is too small or the shipping cost is too large to give the mail order firm a practical advantage. However, for many items, the effective sales tax free aspect of the purchase provides a significant incentive for ordering by mail instead of buying from your neighbor. The goal of this legislation introduced by Senator Bumpers, and of which I am a co-sponsor, is not for the Federal Government to determine who wins or loses but rather to do what we can simply to see that the deck isn't stacked.

PREPARED STATEMENT OF SENATOR HOWELL HEFLIN

Mr. chairman, I want to thank you for holding this hearing today, and I want to say that I am pleased to be an original cosponsor of S. 1825, "The Tax Fairness for Main Street Business Act." For too long now, Main Street Businesses across the country have been put at a competitive disadvantage by out-of-State companies which are exempt from collecting sales taxes on goods delivered across state lines. I believe that it is past time to level the playing field between mail order companies that do not have to pay sales tax and main street businesses that do.

Over the past few months, I have heard from dozens of Main Street business owners in Alabama that are getting killed by out-of-State competitors, and the following example illustrates why this is happening. A main street furniture store owner from Lanett, AL, recently told me of a case where he had actually sold and delivered several pieces of furniture to a customer only to have that customer return the furniture less than a week later. When asked by the furniture store owner if something was wrong with the merchandise, the customer said, "Absolutely not. . . The fact is, I can save a significant amount of money if I buy from out-of-state because I don't have to pay sales tax on the purchase." Most local governments in Alabama have at least a 4 percent sales tax on top of the 4 percent sales tax levied by the State. Therefore, out-of-state retailers are given an 8 percent advantage over Alabama's main street retailers. It is only right, in my opinion, that the competition between mail-order companies and main street retailers is made to be fair and equitable.

As for the specifics of the bill, it is important to note that Senator Bumpers has taken great care to ensure that S. 1825 does not place an undue burden on small businesses. For instance, the "de minimus" provision of S. 1825 will exempt a mail-order company from the burden of tax collection if its nationwide sales are less than \$3 million. In addition, the bill includes a standard local sales tax option which will further ease the effects of the new responsibilities placed on mail order companies by S. 1825. In Alabama, there are hundreds of local tax rates which would be logistically impossible for any company to keep track of. Therefore, S. 1825 will provide mail-order companies—with sales over the \$3 million threshold—the option of paying all applicable local tax rates or a standard local rate called the "in-lieu fee." In sum, the uniformity of the "in-lieu fee" will given mail-order companies the same tax collection responsibilities as every main street retailer in the country.

In closing, I believe that the continued viability of many of America's Main Street businesses is contingent on the enactment of "The Tax Fairness for Main Street Business Act." By cosponsoring this bill, it is not my intention to punish mail-order companies because, in my opinion, they make an important contribution to our economy. However, it is only fair that the playing field be level for all retailers. Therefore, on behalf of Alabama's main street businesses, I enthusiastically support the speedy enactment of this bill.

The CHAIRMAN. Our first panel of witnesses this morning are retailers: Bob Boyd from Boyd Music Center in Little Rock, Jerry Hux, a furniture dealer from Atlanta, and Jerry Engle, a computer store owner from Grand Rapids, MI. So, Mr. Boyd, if we could, we will start with you. I would hope that because of the number of witnesses we have today the witnesses would be able to summarize their testimony, which will give us more time for questions.

Bob?

**STATEMENT OF BOB BOYD, OWNER, BOYD MUSIC CENTER,
LITTLE ROCK, AR**

Mr. BOYD. Thank you, Mr. Chairman and members of the Committee. My name is Bob Boyd. I founded my company, Boyd Music Center, Incorporated, in 1962, and my wife Donnie and I have owned and managed it for the past 32 years. I work on the sales floor daily, and we depend on our music business for our principal source of income.

Our business is one 8000 square foot store located in a small strip shopping center in West Little Rock. We currently have 15 employees. We sell musical instruments, primarily drums, keyboards, guitars, and similar equipment, and we have a staff of private music teachers who have taught thousands of children and adults in our community. I am also a State-licensed contractor for the design and installation of sound, intercommunication, and fire alarm equipment for use primarily in churches, schools, and businesses.

In addition to operating my company, I have been an active member of local and national business and professional groups, having served as chairman of the board of the Arkansas Grocers and Retail Merchants, the Better Business Bureau of Arkansas, and I am currently president of Local 266 of the American Federation of Musicians in Arkansas. I have been a member of that organization for 40 years.

I am here this afternoon to urge your support for and quick action on the Tax Fairness for Main Street Business Act, legislation which I believe is vitally important if I am to compete fairly with out-of-State companies which take advantage of a loophole in current sales tax collection laws.

We are often asked by our customers, both private and commercial, to prepare specifications and price quotations for music and sound equipment. This often requires that we drive to the customer's location at our expense in order to inspect and survey the site. We design these systems specifically for our customers, helping them select the best equipment for their needs, adding a reasonable and fair profit margin, and calculating the appropriate sales taxes required by law. Frequently, we find that we have been out-bid by an out-of-State mail order company by less than the amount of the sales tax. Let me give you an example of what has occurred.

Recently, one of the officials of a church in Searcy, AR, requested we bid on a sound system for their church. My estimate came to \$5,500. The church officials' response was well, I can beat that by ordering the equipment by mail. How much would you charge to install it?

Before coming to Washington, I asked my salesmen to relate similar instances that happened to them. Their specific experiences with out-of-State competitors follows my testimony, and I would request that these experiences, together with my testimony, be made a part of the record of this hearing.

The CHAIRMAN. Without objection.

Mr. BOYD. Thank you. In addition to the example I related, I know we have lost numerous bids to mail order catalogs on wireless microphones and hearing impaired systems, most notably a Missionary Baptist Church about a year ago. Often, the difference in the price is less than \$50, indicating to me that if I had not been required to collect my State's 6 percent sales tax or if my out-of-State competitor had been required to collect the tax I may have made the sale.

My business has survived for 32 years by providing exceptional service and knowledgeable sales consultants. But the recent proliferation of mail order catalogs in my industry has caused a very evident increase in the number of customers who use our show room facilities and trained personnel to select their equipment, then buy it out of State. The fact that they are obligated to pay a State use tax on their purchase just does not seem to sink in. Then, when their high-tech instrument requires repair or adjustment, they bring it to our full-scale professional service department and expect warranty repair, which we are obligated by agreement to provide by many of our manufacturer suppliers. Our choice is to refuse to provide the service and eliminate the possibility of future sales to this customer, or to cheerfully provide the service at our expense.

This is the trend, to leave out of the sales loop the Main Street merchant who supports a manufacturer by investing in his products. The merchant displays products in a retail store with all the accompanying costs; attracts potential end-users by expensive advertising, which in the music industry is almost never shared by the manufacturer or distributor; demonstrates products to a retail buyer; sometimes haggles over price; arranges the financing, often having to provide it myself; provides costly high-skill service, usually at a loss; and absorbs the losses from the uncollectible accounts.

As a Main Street retailer, I am further placed at a disadvantage by being required to collect State and sometimes local sales taxes while my out-of-State competitor has no such responsibility. I know from my experience as chairman of my State Retailer's Association that this problem is not limited to the music business. I submit to you that this unfair competition is a problem for all retailers, and it will become even more of a problem in the future with the growth of the so-called information superhighway and the increasing use of television and computer networks to sell merchandise.

Mr. Chairman, I appreciate your giving me the opportunity to come to Washington to explain to you and the members of this Committee first-hand a problem that confronts retailers like myself every day of the year. I strongly urge the Congress to pass the Tax Fairness for Main Street Business Act because it will remove an unfair advantage that my out-of-State competitors now enjoy, and will enable me to compete on a more equal footing with these companies which are threatening the very existence of small businesses like mine.

Thank you.

[The prepared statement of Mr. Boyd follows:]

PREPARED STATEMENT OF BOB BOYD, BOYD MUSIC CENTER, INC.

Mr. Chairman and Members of the Committee, my name is Bob Boyd. I founded my company, Boyd Music Center, Inc., in 1962, and my wife Donnie and I have owned and managed it for the past 32 years. I work on the sales floor every day and we depend on our music business for our principal source of income.

Our business is one 8,000-square foot store located in a small strip shopping center in West Little Rock, AR. We currently have 15 employees.

We sell musical instruments—primarily drums, keyboards, guitars and similar combo equipment—and we have a staff of private music teachers who have taught thousands of children and adults in our community. I am also a state-licensed contractor for the design and installation of sound, intercommunication and fire alarm equipment for use primarily in churches, schools and businesses.

In addition to operating my company, I've been an active member of local and national business and professional groups, having served as Chairman of the Arkansas Grocers and Retail Merchants Association, the Little Rock Better Business Bureau, and Local 266 of the American Federation of Musicians, of which I've been a member for nearly 40 years.

I'm here this afternoon to urge your support for and quick action on the Tax Fairness for Main Street Business Act (S. 1825), legislation which I believe is vitally important if I am to compete fairly with out-of-state companies which take advantage of a "loophole" in current sales tax collection laws.

We are often asked by our customers, both private and commercial, to prepare specifications and price quotations for music and sound equipment. This often requires that we drive to the customer's location, at our expense, in order to inspect and survey the site. We design these systems specifically for our customers, helping them select the best equipment for their needs, adding a reasonable and fair profit margin, and calculating the appropriate sales tax as required by law. (For your information, Pulaski County, in which our store is located, has a 6 percent sales tax; the remainder of the state is at 5 percent.) We then submit our best price.

Frequently, we find that we have been outbid by an out-of-state mail order company, by less than the amount of the sales tax. Under present law, as you know, these out-of-state firms do not collect sales taxes because our state is not allowed to require it.

Let me give you an example of what has occurred. In September 1992, one of the officials of a church in Searcy, AR, requested that we bid on a sound system for their church. My estimate came to \$5,500. The church official's response was "Well, I can beat that by ordering the equipment by mail. How much would you charge to install it?"

Before coming to Washington, I asked my salesmen to relate similar instances which happened to them. Their specific experiences with out-of-state competitors follows my testimony and I would request that these experiences, together with my testimony, be made a part of the record of this hearing.

In addition to the example I related, I know we have lost numerous bids to mail order catalogs on wireless microphones and hearing impaired systems, most notably a Missionary Baptist Church \$550 system about a year ago. Often the difference in the price is less than \$50, indicating to me that if I had not been required to collect my state's 6 percent sales tax—or if my out-of-state competitor had been required to collect the tax—I may have made the sale.

My business has survived for 32 years by providing exceptional service and knowledgeable sales consultants. But the recent proliferation of mail-order catalogs in my industry has caused a very evident increase in the number of customers who use our showroom facilities and trained personnel to select their equipment, then buy it out of state. The fact that they are obligated to pay a state use tax on their purchase just doesn't seem to sink in. Then, when their high-tech instrument requires repair or adjustment, they bring it to our full-scale professional service department and expect warranty repair, which we are obligated by agreement to provide by many of our manufacturer suppliers. Our choice is to refuse to provide the service and eliminate the possibility of future sales to this customer, or to "cheerfully" provide the service at our expense.

This is the trend: to leave out of the sales "loop" the Main Street merchant who supports a manufacturer by investing in his products. The merchant displays products in a retail store, with all the accompanying costs, attracts potential end users by expensive advertising (which in the music industry is almost never shared by the manufacturer or distributor), demonstrates products to the retail buyer, sometimes haggles over price, arranges the financing (often having to provide it himself), provides costly, highly-skilled service (usually at a loss), and absorbs the losses from the uncollectible accounts.

As a Main Street retailer, I am further placed at a disadvantage by being required to collect state and sometimes local sales taxes while my out-of-state competitor has no such responsibility.

I know from my experience as chairman of my state retailers association that this problem is not limited to the music business. I submit to you that this unfair competition is a problem for all retailers and that it will become even more of a problem in the future with the growth of the so-called information superhighway and the increasing use of television and computer networks to sell merchandise.

Mr. Chairman, I appreciate the opportunity to come to Washington to explain to you and members of this Committee first hand a problem which confronts retailers like myself every day of the year. I strongly urge the Congress to pass the Tax Fairness for Main Street Business Act because it will remove an unfair advantage that my out-of-state competitors now enjoy and will enable me to compete on a more equal footing with these companies, which are threatening the very existence of small businesses like mine.

BOYD MUSIC CENTER, INC.

EXAMPLE OF UNFAIR COMPETITION FROM MAIL-ORDER RETAILERS

There was an occasion early in 1993 when an older couple came in to get a quotation on a popular keyboard. When I gave them a quote (my best cash price), they told me that they had a price that was substantially lower than mine, from a combination of the mail-order price and the fact that the seller collected no sales tax on the keyboard (which sold for about \$3,000, so the tax was quite high). I was unable to match this price, and the sale was lost.

One of my friends in a local band has, on several occasions, tried out a piece of equipment in our store, using our facilities and then ordered the same equipment out of one of the large mail-order catalogs. This person has purchased several instruments and effects devices in this manner.

One of my customers, who is a local solo performer, makes it a habit to ask me all the technical questions he can think of about keyboard equipment and peripheral devices. He will ask me to tell him the strengths and weaknesses of new products. Then, after using my knowledge and the floor model in our store as a demonstrator, he will order the equipment from out of State. He has thousands of dollars worth of gear he has acquired in this fashion. Only once in 3 years can I think of a purchase he actually made from me, and it was because I really needed to move the equipment and sold it for the mail-order price.

SALESMAN MARK PEARROW

In November 1993, a customer came in to inquire about a Pearl drum set. I spent about a half hour discussing the features and qualities of a particular line of Pearl drums. A few weeks later the customer returned with the specific model and color drum set he wished to purchase. I quoted a price (20 percent discounted from the manufacturer's list price) and he asked if I could offer the drum set to him at a still lower price.

I sensed that I was in competition with a mail order outfit and, although not store policy, I reduced the price another 5 percent off the retail price. He walked.

Before leaving, he stated that he had been offered the same merchandise from a dealer in Nashville, TN, at a lower price. As I recall, his discount from the other source was 30 percent.

Even though he would be charged shipping, his price was about \$200 lower from my out of state competitor. Had he been charged sales tax (Tennessee has an 8 percent sales tax, I believe I would have had a chance to get his business at the price I quoted.

I doubt the dealer in Tennessee had the exact drum set in stock. Due to such a large variety in color and set configurations available from the manufacturer, the set would have been ordered rather than sold from stock.

Since it is generally easier and more convenient to deal locally, I am convinced that collection of sales tax might have deterred a mail order purchase in this case.

SALESMAN STEVE DIEDERICH

The CHAIRMAN. Bob, thank you very much. Mr. Hux.

STATEMENT OF JERRY HUX, PRESIDENT, BEVERLY HALL FURNITURE GALLERIES, ATLANTA, GA

Mr. HUX. Thank you. Mr. Chairman and members of the Committee, my name is Jerry Hux and I have a prepared statement that I would like to place in the record, and in the few minutes I have I would like to tell this Committee why people like myself in the retail home furnishings industry support S. 1825.

I operate Beverly Hall Furniture Galleries. We have two high end retail stores in the Atlanta, GA, area. We have one in the Buckhead section of Atlanta and one in a suburb of Roswell, GA. We employ 50 people, including 20 designers and salespeople. We have our own warehouse, and we deliver to our customers in our own trucks. Our sales volume is approximately \$10 million a year.

We have a serious problem with mail order or out-of-State sales. The typical furniture shopper who buys from mail order retailers is a well-educated, upper end to high end consumer. They shop local community sources like my stores, and then phone an out-of-State retailer and conduct a transaction. Some will even drive to the hotbeds of furniture shopping in Hickory and High Point, NC.

Over the past 10 to 15 years, the number of furniture dealers in North Carolina specializing in out-of-State sales has increased several times over, while at the same time the number of full-line retailers throughout the country has decreased by over half. The situation of retailers specializing in out-of-State sales has become self-perpetuating due to the synergy created with the traffic produced by the original out-of-State shipping houses.

This is much like the concept of shopping malls and automobile or restaurant rows within a given area. The customers there are shopping the area and all you have to do is just be there and entice them to buy from you. They no longer have to promote themselves to people outside the State, so people make weekend shopping trips to North Carolina to furniture shop, and these areas have hundreds of thousands of square feet of furniture on display in a retail environment. This is a mecca for furniture shoppers which has evolved primarily because of the desire on the part of consumers to avoid their local and State sales and use taxes on merchandise delivered outside the State.

I would like to share some first-hand experiences with you. Recently, one of our designers spent a great deal of time with a local dentist and his wife. She visited their home, made color selections of wallpaper and fabrics for their chair seats, assisted and directed them in directing a beautiful dining room from one of our better resources—Baker. Our price, which was at a substantial discount off suggested retail to the customer, was \$29,000 before sales tax. The customer agreed on their selection and promised to come into the store on Saturday of that week to finalize the purchase.

They arrived at our store on Saturday with a quote of \$27,000 from a North Carolina dealer. But that was net, with no sales tax. Ours was \$29,000 plus the sales tax.

The CHAIRMAN. And what would the sales tax have been at your store, Mr. Hux?

Mr. HUX. It would have been approximately \$1,750.

They asked us to meet the price and also absorb the sales tax. We agreed to compromise on our price, but we could not com-

promise on the sales tax, and there is not enough margin there to pay the sales tax and compromise on the price. When we failed to compromise, the customer did, in fact, buy the furniture from the out-of-State dealer. The character and ethics of that particular customer aside, we were up against a \$1,700 tax disadvantage.

We recently lost a sale on a Henredon bedroom—Henredon is a manufacturer—under similar circumstances. In this instance, the consumers made their selection from our floor samples and phoned our salesmen in back with a quote from a retailer in North Carolina. Again, the quote consisted of a slightly lower price but no sales tax. We would not waive the tax so the customer bought from the furniture company in High Point, NC. When the customers received their furniture the dresser was too large for the space on their wall. The company in North Carolina would not take the merchandise back, so the customer came in to see us and asked us to intercede with the manufacturer to exchange their dresser and mirror.

We have a lot of instances of this type of thing, customers inviting one of our designers back out to their home and then proudly showing them furniture they bought somewhere else, saying I really liked your suggestions. Let me show you how it looks in the room. And they bought it out of State.

There are regular chartered bus trips by physicians' wives in Savannah, GA, and Tifton, GA, to name a couple of places. Neighborhood newsletters carry testimonials about saving sales tax, and recently United Parcel Service relocated from Connecticut to Atlanta, and as part of their relocation package to their transferees they gave very detailed instructions on how to buy furniture in North Carolina, and specifically talked about avoiding the sales tax.

We feel that your bill will help remedy the situation for us, and we would very much appreciate any support we can get.

Thank you.

[The prepared statement of Mr. Hux follows:]

PREPARED STATEMENT OF JERRY HUX, NATIONAL HOME FURNISHINGS ASSOCIATION

INTRODUCTION

Mr. Chairman and Members of the Committee, I am Jerry Hux, President of Beverly Hall Furniture Galleries, a design oriented retail home furnishings business with two locations in Atlanta. I appear today on behalf of the National Home Furnishings Association (NHFA), a retail trade association comprised of nearly 3,500 home furnishings specialty stores operating in all 50 states. I serve on the NHFA Board of Directors. NHFA is an active member of the Coalition for Fair Collection of Interstate Sales Taxes,¹ which has endorsed this testimony.

THE CASE FOR S. 1825

I come here today to confirm our Association's strong support for S. 1825, the Tax Fairness for Main Street Business Act of 1994. We commend you, Senator Bumpers,

¹The Coalition for Fair Collection of Interstate Sales Taxes is an ad hoc coalition comprised of national, state and local business trade associations and thousands of individual businesses across the country. While the Coalitions is comprised only of business members, it is working closely with a variety of other organizations to pass legislation requiring interstate sellers to collect state and local sales taxes. Some of the organizations working in cooperation with the Coalition include: American Federation of State, County and Municipal Employees; Federation of Tax Administrators; Government Finance Officers Association; Multistate Tax Commission; National Association of Counties; National League of Cities; National School Boards Association; and United States Conference of Mayors. Mr. Melvin Lack, NHFA's Senior Vice President, is the Chairman of the Coalition.

for introducing this legislation, and I would like to explain why our national association has given this issue its highest priority.

At the present time, out-of-state home furnishings firms which actively solicit sales across this Nation do so with no remittance to the state and local governments for state and local provided services such as highways, police protection, waste removal and landfill, etc. This "free-ride" mentality is unfair to the local retailers who collect taxes for these purposes, and to the local communities whose economic vitality is being sapped by this disparate treatment. This "free ride" attitude is especially egregious in the home furnishings business where out-of-state firms encourage local citizens to "shop" our stores and then order from these out-of-state businesses; thus, avoiding the local sales tax.

Senator Bumpers, upon introducing S. 1825, you placed a letter in the *Congressional Record* from Debbie White of White Furniture Company in Benton, AR. I believe that my fellow home furnishings retailer from Arkansas addressed this issue so persuasively that it deserves the widest possible audience; thus, with her permission, I quote from her letter:

"My family has a small retail furniture business in Arkansas. We have paid taxes in the same small town for years. Now we have customers who are being educated by advertisers to shop their local retail stores for model numbers and prices, then call North Carolina and order and avoid paying our State sales taxes."

"I have personally lost individual sales in my area for 15 to 20 thousand dollars. We have found that the larger sales are the ones that people do out-of-state because of the high percentage of tax."

"I'm not crying about the prices; I would just like to have a level playing field. We service our clients with free delivery; we furnish the showrooms where they can touch and feel the merchandise; we finance the merchandise locally, and we employ Arkansas people to sell and deliver the furniture."

"Last year, NBC did a travel segment, and on over 200 stations across our country, showed people how to take their vacations in North Carolina, shop while they are there and save enough in sales tax to pay for their vacation. Then CBS did a week long special on *Good Morning America*, devoting one day to furniture, one to cars, and another to clothes, etc."

"I don't know about the other 49 states, but I do know that our state could use the revenue from those lost sales taxes for our schools, roads, and local government."

Debbie White's complaint is also mine. Let's analyze what happens to Georgia when I lose a sale to a North Carolina mail order home furnishings business. There will be no sales tax remitted to this state by the North Carolina firm; yet the State of Georgia will have conferred a number of commercial benefits on that North Carolina business. They include: maintaining sound local banking institutions to support credit transactions; courts to insure collection of the purchase price; means of waste disposal for both the solicitation pieces sent in the mail and the packing cartons in which the merchandise is safeguarded in transit; and, consumer protection laws which protect buyers and sellers alike. In the case of the seller, these laws create a climate of consumer confidence that inures to the benefit of "mail order" dealers. Of course, there is local and state police protection for valuable merchandise in transit; and local and state highways to facilitate the movement of these goods. Yet, with all these benefits, the state of Georgia does not obtain a single cent from these North Carolina sales to Georgia residents.

The unfairness of this situation can be poignantly illustrated by the recent tragic earthquake in California. Not 24 hours after the devastating quake, with the highway infrastructure in shambles, The *Wall Street Journal* headline read, "Higher Taxes Are Likely in California As Officials Debate Financing of Repairs," but the furniture being sent in from out of state would not share in this burden. Indeed, not a single cent is being paid by out-of-state firms. Shouldn't these out-of-state businesses remit their fair share of sales taxes on purchases being trucked into the state to help with the rebuilding effort? Equity and common sense would dictate that result. S. 1825 would enable the State of California to do just that. It does not mandate a tax. For example, I think it is fair to say that in those few states with no sales tax currently, it is highly unlikely that they will consider a tax.

WHAT S. 1825 WOULD DO

When the Supreme Court decided the Quill Case, it threw down the gauntlet to the Congress: "Congress is now free to decide where, when, and to what extent the states may burden interstate mail order concerns with a duty to collect use taxes." As we see it, S. 1825 is a response to that Supreme Court statement, and is all

about fairness to local retailers and to state and local governments, who would be permitted to efficiently collect taxes that are legally owed before they are forced to raise additional taxes or curtail vital programs to make up for these lost revenues.

We believe S. 1825 has been constructed to ensure that there is no undue burden on businesses generally, and small business in particular. Four provisions, especially, come to mind that demonstrate the even-handedness of the legislation:

- (1) the de minimis exception (Section 3);
- (2) the standard local tax rate may be paid or a standard "in lieu rate" (Section 4);
- (3) minimizing paperwork by calling for quarterly filing (Section 8); and,
- (4) mandatory toll free consumer hot lines to provide information (Section 8).

THE MAIL ORDER INDUSTRY'S ARGUMENTS AND OUR REBUTTAL

We would welcome the opportunity to debate the merits of this legislation with representatives of the mail order industry, but they have chosen to use what they know best—the direct mail—to argue their case.

This being the case, we have taken the statements of Mr. Jonah Gitlitz, President and Chief Executive Officer of the Direct Marketing Association, which he gave upon the introduction of S. 1825. The bold language is a direct quotation. Our rebuttal follows each assertion.

1. S. 1825 "restricts the ready and convenient access to products relied upon by more than 100 million American consumers. . . ."

Answer: This legislation will in no way affect consumer access to direct marketing firms. In 1988, in a Gallup Survey, commissioned by Target Marketing and publicized by the Direct Marketing Association, it was found that a vast majority of mail order customers (78 percent) view the sales tax as totally irrelevant. The main reason people shop by mail is convenience, greater selection, and excellent customer service. S. 1825 in no way compromises ready and convenient access.

2. S. 1825 "threatens the viability of thousands of direct marketing companies and their many suppliers. . . ."

Answer: This statement is gross hyperbole. The "sky isn't falling for the mail order" industry; indeed, in the cover story for *Entrepreneur* (February 1994) entitled "Mail Order Mania \$234.2 Billion Industry Delivers Profits" (See Appendix A), mail order consulting firm, Maxwell Sroge Co., estimates mail order sales grew 14 percent in 1993 from \$205.5 billion to \$234.2 billion. In catalog sales alone, the Direct Marketing Association pegged 1992 sales at \$51.5 billion and 1993 sales at \$54.0 billion. The average growth rate for catalog sales since 1987 is nearly 8 percent. A *Wall Street Journal* article (December, 1993) with the headline, "Catalog Sales Are Going So Well Shippers Find The Pickings Slim," stated:

"Catalog companies love to say how easy it is to shop for Christmas by phone. One call does it all," they say.

Not this year. Many catalog users are finding that its taking more than a phone call to bring home that special gift.

Many catalog companies, caught off-guard by brisk sales, have run out of many of the most popular items in their holiday books. Suddenly, shoppers are hearing, "Sorry, we're out of that," or "It's back-ordered and won't be in until after Christmas."

3. S. 1825 "could ultimately den the economies of many states and the nation."

Answer: We remind the direct sellers of the Gallup results which suggest that the sales tax is totally irrelevant to mail order buyers and about the abundant evidence of their growing prosperity.

4. S. 1825 "would have a negative impact on consumers. The hardest hit would be the elderly, the disabled, families living in rural areas, and single parents who rely heavily on mail order services."

Answer: The largest U.S. mail order company is the J.C. Penney Company and that company collects taxes on every mail order sale. Its number one standing among all mail order companies, notwithstanding the fact it collects sales taxes on every sale, has not harmed its standing with the elderly, the disabled, families living in rural areas and single parents, all of whom have been, are, and will continue to be good J.C. Penney customers.

5. "The complexities of state law" old intrude on the 101.6 million American Consumers who shop at home, particularly those (35 percent) who pay by check and who would have to figure the tax on every order.

Answer: In Section 8 of S. 1825, the sponsors anticipated this objection, and have dealt with it in a creditable and effective manner. Section 8 reads:

"A State shall not have power under this Act to require any person to collect a State or local sales tax on any sale unless, at the time of such sale, such

State has a toll-free telephone service available to provide such person information relating to collection of such State or local sales tax. Such information shall include, at a minimum, all applicable tax rates, return and remittance addresses and deadlines, and penalty and interest information. As part of the service, the State shall also provide all necessary forms and instructions at no cost to any person using the service. The State shall prominently display the toll-free number on all correspondence with any person using the service. This service may be provided jointly with other States."

On a recent flight, I noted that in the United Airlines Shopper's Catalog, *High Street Emporium*, there is this notation on the order form:

"We are required by law to collect the appropriate state and local sales tax for each of the 46 states that have a state sales tax. This is because our primary method of catalog distribution is via the seat pockets of aircraft that fly over all 50 states, not via the U.S. Postal Service. We comply with all laws by remitting all sales tax collected to the appropriate governmental agencies. The 1992 Supreme Court decision (*Quill vs. North Dakota*) which ruled that mail-order companies are exempt from out-of-state sales tax collection does not apply to our business."

My point is, if this company can do it, why can't others?

6. *The majority of [direct marketing companies] can be defined as "small businesses" who would be forced to accept the administrative burdens of collecting and remitting taxes for 45 states and the District of Columbia with 6,100 different rates and 46 sets of exemptions and diverse compliance rules.*

Answer: S. 1825 has a significant exemption for small mail order businesses. Indeed, prior to the introduction of S. 1825, NHFA had argued there be no exemption at all, but Senator Bumpers emphatically wanted to have a meaningful small business threshold for S. 1825. As a result, it is estimated this threshold has effectively excluded 93 percent of all mail order companies. Thus, the firms that would be covered are substantial ones, and have the computer capability to make compliance a relatively easy matter. We know that inexpensive software exists today. Further, it is simply wrong to assert that a firm would be remitting to 6,100 local jurisdictions, because in S. 1825, there is an option to choose a so-called in lieu fee (Section 4(b)(2)(B) and (3)) which makes a single rate option available to every customer.

S. 1825 ANTICIPATES THE FUTURE

As we enter an interactive television era in which conventional merchandising will be turned upside down by TV shopping networks, Congress should be thinking about changing the climate to allow states to make a demand on out-of-state firms to remit a use tax on these sales. Otherwise, Congress by its inaction will continue the inherently unfair system that places "Main Street" firms at a competitive disadvantage.

I note this quote from a recent article (March 1994) in the *New York Times*: "Industry executives predict that home shopping, already ringing up \$3 billion a year in sales, could soar to \$25 billion a year by the end of the decade. . . home shopping is likely to be retailing's fastest-growing sector for the next several years." The Managing Director of the Yankelovich Partners of Westport, CT, predicts that "40 percent of American households will have tried home shopping by the end of 1996, compared with only 10 percent today."

CONCLUSION

When re-examining the doctrine of the *Bellas Hess* case holding in 1992, Justice Byron White questioned the "rationality of perpetuating a rule that creates an interstate tax shelter for one form of business mail order seller—but no countervailing advantage for its competitors." In similar fashion, when introducing S. 1825, Senator Bumpers stated, "I have done my very best to level the playing field for Main Street America. I have done my very best to keep faith with the States, on whom we continue to impose mandates at the Federal level without giving them the money fulfill those mandates."

Mr. Chairman, we on Main Street, thank you for introducing S. 1825. It is legislation that America needs, and with its passage, Congress will have done something to insure the future vitality of Main Street America. S. 1825 does indeed level the playing field without harming the mail order businesses of this country.

The CHAIRMAN. Mr. Hux, before I go on to Mr. Engle, is there any possibility that you can get me that information from UPS for the record?

Mr. HUX. I will attempt to, yes sir.

The CHAIRMAN. See if you can, and forward it to the Committee to my attention, please.

Mr. HUX. I sure will.

The CHAIRMAN. Mr. Engle.

STATEMENT OF JERRY ENGLE, PRESIDENT, COMPUTER PRODUCTS & RESOURCES, INCORPORATED, GRAND RAPIDS, MI

Mr. ENGLE. Mr. Chairman, it is a pleasure to be here. Since my testimony includes many of the things that Mr. Hux and Mr. Boyd have said I will try to make mine brief.

My name is Jerry Engle and I am owner of Computer Products & Resources in Grand Rapids, MI. Our company was founded in 1982 when I was unemployed. I made a lifestyle decision to remain in Grand Rapids and invest in the community and raise my family. Our firm has gone from two people to 72 people in 12 years.

Building a local business in this fiercely competitive computer industry is not easy. It is hard enough to do when there is a level playing field. It is very, very hard to do when Government actions provide an advantage to your competitor, which brings us to the topic of today's hearing.

It is an honor to be here, and I am in favor and speak in favor of Senate bill 1825. I applaud your efforts, Mr. Chairman, and those of your colleagues who are cosponsors of this legislation because I believe it will ensure fair competition for local businesses, and will give local businesses a fair chance to develop and retain jobs by improving and streamlining the collection of State and local taxes. It will help pay for such critical Government services as education, road building, and crime prevention.

While I appear before this Committee today on behalf of my own company, I am pleased to be able to add that the board of directors of the Computing Technology Industry Association which has over 3000 members has authorized me to say that CTIA also supports the enactment of this bill. As president of a Main Street business which employs 72 people and generates \$22 million in annual sales of service, annual sales both in service and product sales in the microcomputer equipment business, I fully support the goals of Senate bill 1825.

Competition between Main Street businesses like mine and mail order companies is not on a level playing field. Many of the examples of Mr. Hux and Mr. Boyd I can share. Simply my company is required by law to collect sales tax in Michigan of 4 percent. Out-of-State mail order companies do not have to collect these taxes. In Michigan we are required to collect sales tax of 4 percent.

The CHAIRMAN. Mr. Engle, does Grand Rapids have a tax?

Mr. ENGLE. No, sir.

The CHAIRMAN. No city or county tax?

Mr. ENGLE. There is a city tax.

The CHAIRMAN. How much is it?

Mr. ENGLE. The city tax is 1 percent.

The CHAIRMAN. So you are talking about a total of 5 percent in your business.

Mr. ENGLE. It is 6 percent now.

The CHAIRMAN. Oh, that is right.

Mr. ENGLE. It just went to 6 percent.

The CHAIRMAN. You had the big tax deal out there the other day.

Mr. ENGLE. Yes, sir.

The CHAIRMAN. Go ahead, I am sorry.

Mr. ENGLE. Thank you. The competitive disadvantage to my company, and any other Main Street businesses that are subject to competition from out-of-State mail order companies is clear and obvious. One need not be a mathematician to conclude that Main Street businesses in Michigan are at a 4 percent price disadvantage, soon to go to 6 percent effective May 1. The playing field certainly is not level.

In my particular industry, which operates on extremely thin margins, the difference in price between a full computer system from my company and exactly the same system from a mail order company may be several hundred dollars.

In addition to these basic arguments with respect to tax fairness and equity, I must also note that the unlevel playing field imposes some very real costs on my company. Consumers, like the ones Mr. Hux and Mr. Boyd have mentioned, many times will tap into the knowledge of our professionally trained people. We will send high-priced people out to do network designs, automation designs, process designs, and then they will buy through mail order.

How do I know this happens? Customers bring the products to us, as with Mr. Boyd, for warranty long after the sale is made and expect us to help solve their problems. We often find ourselves as unpaid consultants.

Let me emphasize this is a serious problem. Most of my business, unlike Mr. Hux and Mr. Boyd, is business to business. Over the past 3 years, we have lost over—that I can identify—\$2 million in sales. Many transactions are half-a-million dollars and 6 percent, \$30,000, is definitely an unfair playing field. Had our company been able to make these sales we would have been able to collect \$80,000 in sales tax in the State of Michigan and remit that to the State of Michigan.

Mr. Chairman, let me also note some reasons beyond leveling the competitive playing field why Congress should enact this legislation. In my prepared testimony it goes into further detail, but over \$100 million is not collected in the State of Michigan—estimated \$100 million—per year, and this could go for more worthy causes such as education, crime prevention, et cetera.

Someone has to pay for all of the services and for the infrastructure in our commerce in the State of Michigan. Obviously, being able to sell into our State, with the significant transactions that I have stated, does cause unfair competitive advantages. I am aware of many of my peers around the country that have had to downsize, had to lay off employees, and have gone out of business. The computer industry is a fiercely competitive industry at this point in time. And with the direct mail order catalog firms it increases that and there is no investment by the direct mail firms in my area. I happen to contribute to the community and have 72 people with families who also contribute to the community.

In that regard, Mr. Chairman, I would also like to state clearly that your legislation is definitely not the full employment act for bookkeepers and accountants, as some would lead you to believe. Being in the microcomputer business, I can assure you that the ob-

ligations on out-of-State mail order companies to collect and remit sales taxes to the State to which the products are ultimately delivered are most definitely not burdensome. With all the software tools available today an easy process can be developed to facilitate the calculation and remittance of tax payments. Will your legislation oblige out-of-State mail order companies to alter their standard operations? Yes. Will your legislation impose an undue burden on them? Absolutely not.

Thank you again, Mr. Chairman, for affording me the opportunity to appear at this hearing. I sincerely appreciate the opportunity to communicate my views on this very important tax, competition, and equity issue. Thank you.

[The prepared statement of Mr. Engle follows:]

PREPARED STATEMENT OF JERRY K. ENGLE, PRESIDENT, COMPUTER PRODUCTS AND RESOURCES, INC.

Mr. Chairman, Members of the Committee, my name is Jerry K. Engle and I am President of Computer Products and Resources, Inc. in Grand Rapids, MI. I have been in the computer field since 1964, and started my company when I was unemployed in 1982 in Grand Rapids, MI. I founded this company, which now operates as CPR/MicroAge, in large part due to a lifestyle decision to settle in Grand Rapids with my family and to be part of the Grand Rapids community. Our firm has grown from 2 to 72 people in less than 12 years. We have very loyal customers and very loyal teammates. Our success has been largely due to our ability to offer computer products and services at a fair price while providing outstanding service and support. Building a local business in this fiercely competitive industry is not easy. It is hard enough to do when there is a level playing field with your competitors. It is very, very hard to do when government actions provide an advantage to your competitor—which brings us to the topic of today's hearing.

It is an honor to appear before you today to speak in favor of S. 1825, "The Tax Fairness for Main Street Business Act of 1994," introduced by Chairman Bumpers. I applaud your efforts, Mr. Chairman, and those of your colleagues who are co-sponsors of S. 1825, because I believe this legislation will ensure fair competition for local businesses, give local businesses a fair chance to develop and retain jobs and, by improving and streamlining the collection of state and local taxes, help to pay for such critical government services as education, road building and crime prevention.

While I appear before this committee today on behalf of my own company, I am pleased to be able to add that the Board of Directors of the Computing Technology Industry Association (CTIA) has authorized me to say that CTIA also supports enactment of S. 1825. CTIA is a national not for profit organization representing 3,000 companies from all segments of the microcomputer industry, and my company is a CTIA member. You may recall, Mr. Chairman, that CTIA (formerly ABCD: The Microcomputer Industry Association) has long supported your hard work in the area of tax fairness.

As President of a "main street" business which employs 72 people and generates \$22 million in annual sales and service of microcomputer equipment, I fully support the goals and objectives incorporated in S. 1825. Let me explain why.

Competition between "main street" businesses, like mine, and mail-order companies is not on a level playing field. Simply, my company is required by law to collect sales tax on products we sell. Out of state mail-order companies are not. In Michigan, we are required to collect sales tax of 4 percent while out of state mail-order companies that sell goods to residents of Michigan do not. The competitive disadvantage to my company, and any other "main street" business that is subject to competition from out of state mail-order companies, is clear and obvious. One need not be a mathematician to conclude that main street businesses in Michigan are at a 4 percent price disadvantage to out of state mail-order companies right from the start. And the playing field is about to become even more tilted: my state recently enacted legislation that will increase its sales tax from 4 percent to 6 percent beginning next month. The sales tax increase will further increase the price differentials between Michigan's main street businesses and out of state mail-order companies and exacerbate the current difficulties "main street" businesses face.

In my particular industry, which operates on extremely thin margins, the difference in price between a full computer system from my company and exactly the

same system from a mail-order company may be several hundred dollars. For price conscious purchasers, this price difference is difficult to ignore. Clearly, it is extremely challenging for main street businesses to compete in a market where, even before we begin, the rules of engagement put us at a 4 or 6 percent disadvantage.

In addition to these basic arguments with respect to tax fairness and equity, I must also note that the unlevel playing field imposes some very real costs on my company. Savvy customers seeking bargain prices will seek advice and counsel from my extensively trained and skilled sales personnel, engage in an intellectual "touch and feel" to determine exactly what products to purchase, and then purchase equipment from an out of state mail-order company because such companies are not required to collect sales tax. How do I know this happens? Customers bring the products purchased from an out of state mail-order company to me for service or warranty work. Thus, not only is it difficult to compete on the sale of the products, but I often find myself serving as an *unpaid* consultant to countless customers who eventually purchase products from an out of state mail-order company. I believe that this predicament can be directly attributed to the absence of any requirement on out of state mail-order companies to collect sales taxes.

Let me emphasize that this is a serious problem. Most of my business, and certainly much of the computer equipment business in this country, is business to business, not business to personal use. Business purchasers are usually very aware of mail-order options. I estimate that my company has lost over \$2 million in large transaction sales to mail order firms over the past 3 years; in most cases after we had provided significant counseling on product selection and use. Had our company made these sales, roughly \$80,000 in sales taxes would have been remitted to the State of Michigan.

Further, Mr. Chairman, these lost sales can be of very critical importance. I am aware of some of my local competitors in this fiercely competitive field who have gone out of business or have significantly downsized partially due to this unfair competition from out of state mail-order companies. Furthermore, as Past Chairman of the MicroAge Franchise Dealer Council Association, I am aware of many experiences where my peers have lost business and have been significantly impacted by out of state mail-order companies. While one cannot blame business failures or business losses solely on mail-order firms, it is a fact that they hurt those of us based on "main street," sometimes critically.

Mr. Chairman, I hope these examples will help you show others in the Congress why a fair and consistent law governing tax collections by out of state mail-order houses is needed. We don't have one now. "The Tax Fairness for Main Street Business Act of 1994" represents fairness.

Mr. Chairman, let me also note some reasons beyond leveling the competitive playing field why Congress should enact this legislation.

In particular, it represents a reasonable and fair way to assist state and local governments which are struggling to provide needed services. The most recent data that I have been able to find regarding my own state of Michigan estimated that the revenue potential to the State of Michigan from uncollected sales taxes on out of state mail-order sales in 1992 would have been \$93.9 million. With the pending sales tax increase from 4 percent to 6 percent in Michigan, the amount of uncollected taxes will be substantially higher in subsequent years. Mr. Chairman, that's over \$100 million each year that will never be spent on services such as improving educational services for our children. From that lost revenue not one single textbook will be purchased; not one single teacher will be hired; and, at the risk of sounding self-serving, not one single public school classroom or library computer system will be installed to hook into the often discussed information superhighway. Nor will any of that lost revenue ever be allocated to hire another police officer to work the beat; to fund a substance abuse prevention program; or to initiate any early intervention programs for at-risk youth. These are very substantial annual revenues that should be owed but are not, and are thus lost forever each year if present law remains unchanged.

Yet someone has to pay for all the services and for the infrastructure that facilitates commerce. Currently, the "main street" businesses and their customers are footing more than their fair share of the bill. Tax treatment of out of state mail-order companies means that sales from those companies do not contribute to the taxes which pay for necessary infrastructure and services. You have noted, Mr. Chairman, that total uncollected taxes on out of state mail-order sales for the entire United States just in 1992 was approximately \$3.3 billion. A lot of good can be done with that kind of money, Mr. Chairman—and it can be collected without being unfair to the out of state mail-order firm.

In that regard, Mr. Chairman, I would also like to state clearly that your legislation is definitely not "The Full Employment Act for Bookkeepers and Accountants"

as some would lead you to believe. Being in microcomputer business, I can assure you that the obligations on out of state mail-order companies to collect and remit sales taxes to the state to which the products are ultimately delivered are most definitely not burdensome. With all the software tools available today, an easy process can be developed to facilitate the calculation and remittance of tax payments. Will your legislation oblige out of state mail-order companies to alter their standard operations? Yes. Will your legislation impose an undue burden on them? Unequivocally, no.

Thank you again, Mr. Chairman, for affording me the opportunity to appear at this hearing. I sincerely appreciate the opportunity to communicate my views on this very important tax, competition, and equity issue.

I will be happy to try to answer any questions you may have.

The CHAIRMAN. Thank you very much, Mr. Engle.

First, let me thank all three of you for coming considerable distances to be with us this afternoon. I would hope that you would have the opportunity to also appear before the Finance Committee chaired by Senator Moynihan. He has a great interest in this, and of course if he has not already he is going to get a letter from Governor Cuomo telling him that he strongly endorses this legislation.

I just have a couple of questions for you because I have long since learned to take yes for an answer. We are all on the same wave length. But let me just ask you, Mr. Boyd, for openers, I have to confess to you that I have done in younger years exactly what some of your people have done. I have gone in to get model numbers, find out what I wanted, and made the purchase by mail. Now, I have not done that in 30 years, but I have done it in my lifetime. It is not uncommon.

And, Mr. Hux, I used to be a furniture dealer, so I know how that works, too. I have had customers, time after time, come and look at floor samples in my store and go straight to the factory 23 miles away and buy it through an employee who had purchase privileges in that particular factory. That was in Fort Smith, AR, which used to be a substantial furniture center. It is not so much anymore.

But, Mr. Boyd, let me ask you this: These people who bring the merchandise that they have bought from mail order houses to you for repair, I take it your testimony is that if that is a brand that you sell, oftentimes you have a dealer contract that obligates you to repair and service that product, is that correct?

Mr. BOYD. That is correct. That is part of the requirement in the dealership, which is a franchise.

The CHAIRMAN. Well, why would you object, incidentally, to that part of it? Why would you object to doing the service work? They have to pay for it, do they not?

Mr. BOYD. No.

The CHAIRMAN. If it is in warranty, the company pays you, just like an automobile warranty?

Mr. BOYD. The manufacturer pays a fixed rate which is never enough to cover our cost of actually making the repair. This is highly technical equipment that requires personnel that have the training to accomplish it, and it can only be done in warranty station locations.

The CHAIRMAN. So you get a double whammy.

Mr. BOYD. Yes, sir.

The CHAIRMAN. Number one, you do not sell the merchandise, if it is a product you sell you are required by your manufacturer to service it, and they do not pay you enough to pay your costs.

Mr. BOYD. That is absolutely correct.

The CHAIRMAN. Well, that is very interesting.

I would just make one other point, and this is some of the mail order houses say that they do not constitute a burden on the community. Now, we have some local officials here who are going to testify differently today because 3.6 million tons of solid landfill waste is third class mail, and the vast bulk of that is catalogs. Tonight when I go home I will have probably five catalogs in the foyer where they have fallen on the floor through the mail chute. My guess is that in volume it will be 10 times as much as the first class mail that I will receive today. It is a big landfill problem.

Secondly, of course, these people do not have to have a showroom, they do not have to display the merchandise, they do not have to have salesmen on the floor, so in a sense they also do not create jobs in the community. They create jobs somewhere, but they are not in the community where the merchandise is going, and I come from the old school. If you have ever had a small hardware, furniture, and appliance store like I did, the only thing that keeps that community breathing are the local Main Street merchants, and it has become increasingly difficult for them to function in communities where their revenue source is continuing to dry up. These mail order sales continue to increase rather dramatically every year. I know it must be very profitable, because the amount of it that is coming in is just prodigious. Senator Pressler.

OPENING STATEMENT OF HON. LARRY PRESSLER, A U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator PRESSLER. Thank you, Mr. Chairman. I think this is a very useful hearing as we struggle to improve the fairness of our tax laws. I just returned from my home State where there is a governor's race, and they are debating the fairness of property taxes versus other types of taxes. In addition, I have just this morning seen my personal income tax return, which gave me a jolt. So we are talking about a very unpopular thing here—taxes. Nevertheless we have to face up to wrestling with this issue, and I welcome the witnesses.

PREPARED STATEMENT OF SENATOR LARRY PRESSLER

I want to thank Chairman Bumpers for holding this hearing. I also would like to welcome our witnesses and thank them for appearing here this afternoon. I look forward to hearing their testimony. Though I commend Chairman Bumpers for his attempt to level the playing field between "main street" businesses and mail-order firms by introducing S. 1825, I also know similar bills have met with little success. I believe a careful analysis is in order.

We are not here today to discuss the pros and cons of a tax on mail-order purchases. Rather, we are here to examine the ramifications of allowing each state to collect this "use" tax.

Although my home state of South Dakota stands to gain very little from the collection of such a tax—estimates tell us only \$4.4 million in additional revenue yearly—in these past few weeks I have received numerous calls and cards of support from small business owners regarding Senator Bumpers' "Tax Fairness for Main Street Business Act." However, I also have heard from the other side—South Dakota's thriving mail-order companies. Additional revenue for South Dakota's education system also is at stake. For these reasons, I must carefully weigh both the pros and

cons of this particular bill. In addition, I would like to submit for the record statements and letters I have received from constituents representing both sides of the argument.

As I understand it, an analysis examining the potential compliance costs of such a change in current law has yet to be conducted. Various studies have estimated the potential increase in revenue for states that currently collect sales tax. However, no one has estimated the negative impact—the added costs of administering and enforcing a change in tax law that would require mail-order firms to collect and remit sales tax to 45 different states.

I ask my colleagues and the witnesses here today to seriously consider both the advantages and disadvantages involved in this piece of legislation. I want to make absolutely certain that should we allow each state to collect mail-order taxes, we do not create a situation in which the costs of compliance for the companies affected result in a diminished sales that, in turn, result in diminished tax base. I also want to ensure the compliance costs do not put mail-order firms at a substantial disadvantage to other retailers—thus creating the problem directly opposite to that which cosponsors of this legislation seek to correct.

Let me ask this panel, the National Federation of Independent Businesses, which I rely upon a great deal, conducted a recent survey of its members. 82 percent of those responding opposed the idea of allowing States to collect sales taxes on interstate sales. If the Main Street Tax Fairness Act was designed to help small firms maintain their competitiveness, how do you explain such a reaction? Maybe anything that has the word tax in it causes opposition by NFIB members. Maybe they did not fully understand it. I do not know. We cannot govern by surveys. We govern by principle, I hope. However, what about this NFIB survey? Are any of you familiar with it, or would you like to try to explain it?

Mr. ENGLE. I cannot say that I am familiar with it, Senator, but the taxes are due. I think it is, not to use the term ignorant, but a lot of people are not aware that they are supposed to pay a use tax anyway, so a good plan is a simple plan. Obviously, anything with the word tax on it people are against, I believe, but these taxes are due and collectible anyway because if you do sell into a State the user is supposed to report that tax. I am not 100 percent sure of the technicalities, but use tax is already required to be paid and \$3.5 billion is out there that is not collected.

Mr. HUX. I know, being a member of the National Home Furnishings Association Board and also the Georgia Home Furnishings Association, none of our membership is opposed to this legislation. As a matter of fact, they see it as very critical. I would say it would have to be a lack of understanding or companies who feel like their life blood is selling merchandise into another State and having a competitive advantage. I cannot imagine why else it would be.

Mr. BOYD. The NFIB, of which I am a member, has a lot more members than retailers. Retail just makes up a portion of it. I have not seen the question or the wording of it or whether or not it was explained to them that it was a tax that already existed, but I would think that that would be a factor also.

Senator PRESSLER. Could staff get the question NFIB used?

My second question deals with the fact that mail order sales currently exceed \$30 billion annually. A recent Gallup survey of consumer shopping habits concluded that 78 percent of those polled viewed the sales tax issue as totally irrelevant when buying by mail. They shop by mail for convenience. How do you predict such an attitude would affect the mail order business, assuming a mail

order tax eventually is imposed? Does anybody want to comment on that?

Mr. ENGLE. I do not think it would hurt the mail order business. I shop by mail for convenience sometimes. I cannot see where it would hurt it. I think there is emotion.

I would like to add one thing to what Mr. Boyd said: What is being hurt for these manufacturers that are selling direct, and he by contract—same with me if someone buys a computer, a brand new computer, I by contract—have to treat that customer with respect, which we would anyway, and try to solve their problems. Believe me, there is no way to create good will if you cannot solve their problems in a timely fashion, because I may not have that part in stock that they bought from somebody else, and they walk away from my location feeling that I have tried to deny them good service, which is not the case, and the manufacturer can pull our authorization if they get unnecessary complaints from the consumer. So it is a no-win situation many times when you are trying to take care of the consumer.

Senator PRESSLER. Touche Ross studied the impact on mail order firms of multi-State sales tax collection, and it concluded that such a tax would create compliance costs six to seven times greater than those of the retailers who are able to collect sales tax at the register. Do you consider such a disproportionate burden to be a leveling of the playing field between Main Street businesses and mail order firms?

In addition, my home State of South Dakota would stand to gain about \$4 million in additional revenue per year, but once this \$4 million is distributed the amount would seem almost insignificant because in order to collect this amount each separate mail order firm affected by S. 1825 would be subject to 45 different sets of exemptions and filing procedures. When the administrative costs of compliance are figured in, would it not be fair to say that for some States the revenue gain may equal or be less than the revenue loss?

Maybe that is a problem in the legislation.

Mr. HUX. I know in our business, we have a computer software package that allocates payments due or announces payments due to various vendors. It also allocates sales tax by jurisdiction. We have multiple counties around our jurisdiction that we have to collect different rates on. We submit it to the same place but we collect different rates.

I have always felt that the compliance issue would be something where a computer would do the majority of the work and there would be 50 checks having to be written every quarter. That is what I think.

Mr. ENGLE. Senator, I would like to add to that. I am in the computer business and work with a national software firm that wrote software for the oil and gas industry. And that is probably the most complicated industry to collect taxes or report taxes for because gas is taxed about 50 different ways. This would be a lot easier than that situation, so computer software would help take care of that.

Senator PRESSLER. Thank you, Mr. Chairman, I have some more questions, but I will put them in for the record to give my colleagues a chance to ask a question here before the vote.

The CHAIRMAN. Senator Bennett.

**OPENING STATEMENT OF HON. ROBERT F. BENNETT, A U.S.
SENATOR FROM THE STATE OF UTAH**

Senator BENNETT. Thank you, Mr. Chairman. Let me start by saying for the record that I run a business that has wrestled with this issue. We were in the mail order business, still are. The company that I was the CEO of is still very much in the mail order business. And I have some direct experience with this. So let me just share with the Committee some of that experience and then get the reaction from the witnesses.

We felt this issue to be serious enough that we considered not going into some States because of the cost of complying and the fear of an audit. We discovered, in time, that that was short-sighted and that the audit was not as expensive as people had told us that it would be, and we discovered also the accuracy of the comment about computers because we sell with an 800 number and deal with credit cards. So that when people get our catalog and call us we have got a computer there anyway. We simply say, if you are calling from North Dakota or Iowa or Arkansas or Texas or wherever, you look down and we will add X percent sales tax, and it is a single keystroke and you have got the amount and you are telling them on the phone.

So I am disposed to vote for this bill, based on my experience, in terms of companies that have that kind of capability. And I fully agree that the example given by the witness with respect to heavy equipment—that is, big ticket items where they go into one store and price it and then go out and place the order so that they can save 5 percent, 6 percent, whatever—is a practice that we clearly need to do what we can to level the playing field.

Having said all those nice things about the bill and my experience with it, let me raise for your comments the one area where I have concern. Picture, if you will, a mail order company that does not have an 800 number, that is true mail order and deals with its customers entirely by mail. Picture a company who has carved out a niche for itself in small town America.

We are not talking about Sharper Image, here. We are not talking about somebody who buys the American Express Card list. We are talking about somebody who has built over time a clientele of small town America where they get their catalog in the mail, they read it, they write a check, and put it in an envelope. And the average sale is, let us say, \$30.

Okay, so now a 5 percent sales tax on \$30 is \$1.50. And the person who writes out the check from the catalog who ignores the requirement that he or she submit the sales tax sends in the \$30. What is the merchant going to do? Clearly, it is going to cost him more than \$1.50 to go collect the sales tax. So he is going to pay it out of his own proceeds, which means that he has just cut his profits by 5 percent of sales, and he may be in a low-margin operation where 5 percent of sales is approaching his total margin on his return.

He cannot get on the phone the way we could in my former company and call them up and say I have your order here and I will be shipping it to you, but you neglected to add the sales tax. Is it

all right if I put an extra dollar and a half on your credit card? Thank you very much, and it will be in this afternoon's mail. We can do that, and it does not cost us \$1.50 to make that phone call. This individual, this circumstance I have described, has that problem.

You have studied this bill. You have helped consult with those who have written it. Do you have a solution for my mythical mail order operator?

Mr. ENGLE. Is this a mythical mail order operator, Senator Bennett?

Senator BENNETT. As a matter of fact, it is not.

Mr. ENGLE. You are setting us up.

Senator BENNETT. No, I made it mythical. Frankly, I do not know what his average sales are, but there have been people who have been to see me on this issue knowing that I am disposed to support the legislation, who said you have not paid attention to our circumstance. You are reacting entirely out of your experience at Franklin, and we have an entirely different clientele and this is our problem.

Now, I will not tell you what I said to him. I want to hear what you would recommend I say to him.

Mr. ENGLE. If I could take a stab at that, again, I started my business when I was unemployed. I had no money in the bank, four kids, the first one going to college. I have had to reengineer my business every 2 years. This is a fiercely competitive industry. The whole country, the whole world, it is a global economy.

I would say this gentleman should take a good, hard look at whether he wants to be in this business. We all have to survive and we have to do things that are not pleasant. We have to do it with ethics, and I would say he should take a serious look at whether they should stay in this business or not, because small business do not make all the rules but we have to comply with them, and some of them are unpleasant. But you can either take an attitude that it will not work or you can take an attitude that you are going to make it work.

I am not sure if that answers your question, but it is not easy out there.

The CHAIRMAN. That is not an answer that is going to get you reelected.

[Laughter.]

Mr. BOYD. May I add something to that?

Senator BENNETT. Please.

Mr. BOYD. As regards the absorption of costs, I will be happy to make a list for your mythical mail order merchant of the costs that I absorb every day that he will not have to absorb. If it is a question of comparing absorption of costs, any Main Street merchant can make that list very quickly.

Mr. ENGLE. That is true.

Senator BENNETT. Mr. Hux, do you have any help for me?

Mr. HUX. Well, one of the things that I understand about the bill is that the threshold is of \$3 million in total sales. Any company is exempt from this rule if it has less than \$3 million in sales and less than \$100,000 in business in any given State. So we are talking about a fairly substantial number of orders for a company at

\$25 and \$30 a pop, and I think, even though it would not get you reelected, I think that these companies probably do need to move into the electronic age. I think it is probably a necessary thing. But the thresholds would protect the truly small very specialized companies, I would think.

Senator BENNETT. Well, you have focused on the area that I have focused on, which is an examination of the de minimus area. A company as big as the one that I left clearly has enough resources to take care of its problems and clearly is doing well enough that a 5 percent of sales hit to them would be big enough that they would buy themselves whatever 800 numbers and computers and things they would need in order to protect themselves. As I say, that is what we did. And we are collecting State taxes in all 50 States and discovered it was not nearly as burdensome as we were warned that it would be in advance. We withstood audits from most of the 50 States and discovered that that is not as painful as a lot of people told us it would be.

But I think that is the one area, Mr. Chairman, I wanted to look at with the members of the Committee, whether the de minimus figures are in the right area, whether we do have the right level of that. Because I think that is the answer. Somebody just getting started, some small business that is trying to get going in a mail order circumstance that would find this kind of burden the difference between success and failure, and then would grow to the extent that it would begin to compete with you.

You are not worried about competition from somebody that has these low kinds of volumes. I think that is the area we ought to look at, Mr. Chairman, and I appreciate your focusing on that.

The CHAIRMAN. We are looking at it now, Senator Bennett.

Senator BENNETT. I appreciate your testimony and assure you this is an area that needs careful scrutiny, and I congratulate the Chairman on your initiative on getting us into this.

The CHAIRMAN. Before we go to Senator Hutchison, and along that line to clarify the record, Mr. Hux has accurately described the minimum requirements under the bill. It is \$3 million in total sales or \$100,000 in any one State. And I have been shocked by the opposition of the people who support this bill to that provision. They do not think there ought to be any de minimus exemption.

Now, here are the statistics: By this \$3 million/\$100,000 threshold we eliminate 87 percent of the mail order houses in America. We only eliminate 12 percent of the volume. In other words, 13 percent of the mail order houses are doing 88 percent of the business.

Senator BENNETT. That does not surprise me at all.

The CHAIRMAN. The other thing I might say, pursuant to Senator Pressler's question regarding the NFIB poll, that was a 1986 poll. I promise you, if you let me word the question the results would be the opposite. It will be 82 percent in favor of the bill as opposed to maybe 12 percent who opposed it.

Senator Hutchison?

OPENING STATEMENT OF HON. KAY BAILEY HUTCHISON, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator HUTCHISON. Thank you, Mr. Chairman. I applaud your efforts in trying to attain tax equity for the cities and counties and

States that are in this competitive situation. I had a small business, and I would be under the \$3 million sales level, and I think that we do have to be aware that there are certain levels of small business people who are not computerized yet. But I think certainly with \$3 million in sales, a person has to be computerized.

I think that as long as you have that kind of de minimus it really is going to take away the burden that Senator Bennett mentioned, but I do think we need to have a de minimus provision kept in the bill. I would not want to force someone who is a start-up company who started with four children and being unemployed—that would be a difficult burden—to require computerization. But once you get to the \$3 million level in sales I think you are going to have to be computerized, in my experience with my own small business.

I am going to reserve my questions because I have a distinguished County Commissioner from Dallas who is going to be on the next panel, so I want to reserve my comments for that time. But I am very appreciative of your coming. I relate very much to you and your endeavors as small business persons, and we do want to help make a level playing field where we can.

Thank you.

The CHAIRMAN. Thank you, Senator Hutchison. Senator Kempthorne.

OPENING STATEMENT OF HON. DIRK KEMPTHORNE, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator KEMPTHORNE. Mr. Chairman, thank you very much.

Mr. Chairman, I, too, would like to extend my compliments to you for your leadership on this issue. I am proud to be a cosponsor of this legislation.

The CHAIRMAN. I have announced that previously, and I appreciate your cosponsorship.

Senator KEMPTHORNE. Thank you. I am proud to do so.

I think this bill is so important for local businesses in order to compete fairly, and I think this allows us to do so. This has been a very strong issue with local businesses back in Idaho. They are competing with business entities that pay no local property taxes, that create no jobs in Idaho, and so this is very difficult for small business.

Also, I think it is worth noting the extent of the revenue that can be generated by this. Idaho is not a largely populated State, yet this measure will allow us to generate \$10 million of additional revenue. I think all of us are looking for those opportunities where we can find additional revenues for local and State governments. Great efforts are being undertaken now to stop these unfunded Federal mandates, which will really help.

Also Mr. Chairman, I would like to just make part of the record this joint memorial by the Idaho legislature in strong support of this very effort and just tell you that you have a willing partner on the floor of the Senate on this issue.

The CHAIRMAN. Thank you very much, Senator Kempthorne.

[The information referred to follows:]

TEXT OF JOINT MEMORIAL NO. 13, BY REVENUE AND TAXATION COMMITTEE,
LEGISLATURE OF THE STATE OF IDAHO

A Joint Memorial, To the Senate and House of Representatives of the United States in Congress Assembled, and to the Congressional Delegation Representing the State of Idaho in the Congress of the United States.

We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the Second Regular Session of the Fifty-second Idaho Legislature, do hereby respectfully represent that:

WHEREAS, the 1967 United States Supreme Court decision in the case of "National Bellas Hess, Inc. v. Dept. of Revenue," (386 U.S. 753 (1967)) denies states the authority to require the collection of sales and use taxes by out-of-state mail order firms that have no physical presence in the taxing state, even though they solicit and obtain significant sales there through the mail and common carriers; and

WHEREAS, in its 1992 decision in "Quill Corp. v. North Dakota," (U.S.S.C. Doc. No. 91-194), the United States Supreme Court clearly indicated that the Congress of the United States can, consistent with the U. S. Constitution, enact legislation authorizing direct marketers to collect state and local use taxes; and

WHEREAS, the inability of states like Idaho to require certain direct marketers and other businesses not physically present, but selling to their residents, to collect sales and use tax places many community businesses that support state and local governments at a substantial competitive disadvantage; and

WHEREAS, restrictions on collecting such taxes result in a loss of billions of dollars nationally and millions of dollars in Idaho of legally due sales and use tax revenue; and

WHEREAS, according to a recent report released by the Advisory commission on Intergovernmental Relations, the revenue potential to all states from untaxed interstate mail order sales is projected to be \$3.27 billion in 1992 and that the loss of tax revenue to the State of Idaho in the same report is estimated to be \$12.7 million; and

WHEREAS, organizations representing local retailers, state and local officials and public service recipient groups are working to achieve enactment of federal legislation that would authorize states to require direct marketers to collect state sales and use taxes; and

WHEREAS, in the two decades since the "National Bellas Hess" decision, improvements in communications technology and transportation distribution systems have changed the nature and extent of interstate sales and the recent and projected rapid growth in interstate sales, through television, mail order, "800" telephone numbers and by other means of electronic communications indicates that, without corrective legislation, collection of sales and use taxes will become increasingly inequitable and unenforceable; and

WHEREAS, there has been introduced into the Senate of the United States a bill, S. 1825, "The Fairness for Main Street Business Act of 1994," that would allow state and local jurisdictions to require out-of-state companies to collect sales or use taxes on tangible personal property sold to residents of the state or local jurisdictions if the company's national sales are not less than \$3 million and sales into the state are not less than \$100,000 and which includes other fair and reasonable safeguards for out-of-state companies.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-second Idaho Legislature, the House of Representatives and the Senate concurring therein, that we respectfully request Congress to enact S. 1825, "The Fairness for Main Street Business Act of 1994," or substantially similar legislation that would prevent this state's revenue loss and remove the competitive advantage now enjoyed by some out-of-state businesses.

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

The CHAIRMAN. Let me just conclude this panel by saying, Senator Bennett, to your eternal credit you are one of the few companies—probably were—are you no longer associated?

Senator BENNETT. I still hold a seat on the board, uncompensated, I hasten to add.

The CHAIRMAN. This is not the Ethics Committee, this is the Small Business Committee.

[Laughter.]

The CHAIRMAN. But here is a catalog of Franklin Quest, which is the company to which Senator Bennett referred, and it is, compared to a lot of mail order houses in this country who say this is not doable, a relatively small operation.

Senator BENNETT. We do about \$200 million a year.

The CHAIRMAN. Oh, I apologize. That "ain't" small business.

Senator BENNETT. We used to be small.

Senator HUTCHISON. That is why he is not compensated.

Senator BENNETT. We used to be small, but I do not apologize for the fact that we are not anymore.

The CHAIRMAN. That is what America is all about, starting off small and getting big.

But the other thing is to people who think this is a terrible burden, here is a catalog, Lotus Selects. They collect in 25 States. Joseph A. Banks, 26 States. Here is Deluxe Forms, Stationary and Supplies, apparently a competitor, they collect in all States. Here are the Boy Scouts of America who solicit by catalog all kinds of badges, clothing, everything for Boy Scouts. They collect in all 50 States. Harry & David, my favorite Christmas organization, collects in 24 States. So the argument that it cannot be done doesn't wash. These people obviously find that it can be done.

Gentlemen, again I thank you all very much for being with us today.

Continuing with our second panel, we have Mr. Jim Jackson, County Commissioner, Dallas County, TX; Mr. Charles Scholz, Mayor of Quincy, IL; and Ms. Janice Mee, past president, Florida School Boards Association of Sarasota, FL.

Our distinguished colleague Senator Hutchison would like the privilege of introducing Mr. Jackson to the Committee.

Senator Hutchison.

Senator HUTCHISON. Thank you, Mr. Chairman. I was very pleased that Commissioner Jim Jackson was chosen to represent the National Association of Counties. I have known Jim Jackson for a long time. He has been on the Commissioner's Court of Dallas County and he has served very well and very ably and he is one of the leaders in our community.

Jim Jackson is a person who really does understand how hard it is for a county government to make ends meet. He has seen the effects of unfunded mandates from the Federal Government and he has also seen the effects on the small businesses of our county that have a hard time making ends meet because of the taxes and the regulations and the mandates, and then the unfair competition on top of that sometimes is enough to just do them in.

He has a distinguished record of public service, and it is my pleasure to welcome one of the people who lives in my home town of Dallas, Commissioner Jim Jackson.

The CHAIRMAN. Thank you, Senator Hutchison. Mr. Jackson, please proceed.

STATEMENT OF JIM JACKSON, COUNTY COMMISSIONER, DALLAS COUNTY, TX

Mr. JACKSON. Thank you, Senator Hutchison. I am under dual pressure here today because the Senator is my Senator and my

friend but she is also my constituent. So I am pleased that she is impressed, and I want to keep her support.

The National Association of Counties strongly supports S. 1825. We have been requested by the Government Finance Officers Association to state that the association wants to go on record in support of S. 1825 also. The GFOA represents 12,600 officials serving in cities, counties, school districts, and other special districts in the United States and Canada. We commend you, Mr. Chairman, for your leadership in drafting the bill that has the support of governors, legislators, county commissioners, and school officials.

We are not talking about new taxes on consumers. Many of us are politicians also. We do not want to talk about new taxes either. But your bill addresses existing sales taxes that consumers pay every day when making purchases from their local clothing, jewelry, appliance, and furniture stores. Your bill will require collection of existing sales taxes when making purchases through catalogs, TV shopping, and other mail order sales. The taxes are already on the books. Your bill only requires that existing taxes be paid.

Many of our local retailers are at a distinct disadvantage in competing with out-of-State mail order companies. In many of the urban counties in Texas the combined State and local sales tax are as high as 8.25 percent. Companies that do not have to pay that 8.25 percent are at a distinct advantage over our local merchants.

It is clear that four retail industries are particularly hard hit in our area: furniture, computers, jewelry, and specialty clothing. I have been told by the owner of one large furniture store that he knows he is competing with furniture outlets in North Carolina, West Virginia, and several other States. Even figuring their freight costs they can under-price him because of the 8 percent sales tax advantage.

Consumers can go to a local computer store, determine exactly what computer brand and what optional equipment they want. They may even have it demonstrated for them. Then they can go to an electronic sales company and order the same equipment but without the extra 8 percent.

I was told by the Texas Comptroller's Office they have entered into agreements with a number of out-of-State mail order companies to collect sales tax for sales made in Texas. If it can be done by some of these companies, why can it not be done by all of them?

Let me turn to the impact on State and local governments in not having these revenues and the property tax. NACO recently completed a fiscal survey of the 100 or so largest counties in the Nation. The survey shows that an improvement in the economy has yet to reach the urban counties as they struggle with difficult fiscal problems. More than half of the counties responding to the survey said they have had to make reductions in staff and expenditures to meet balanced budget requirements.

Unfunded Federal and State mandates and the burden of fighting increasing crime are major causes of this budgetary stress. Most revealing is that counties are not optimistic about their fiscal future. Overall, only the slightest improvement in fiscal condition is expected or anticipated over the next 3 years. Sixty percent of the counties reported raising selected fees, fines, and charges dur-

ing fiscal 1993. More than one-third had to raise property taxes, postpone scheduled capital projects, and freeze hiring. Similar actions are reported as anticipated or already enacted for fiscal 1994, and budgetary actions such as drawing down reserves seems to be gaining frequency.

Dallas County also is experiencing a problem shared by many other core cities and core counties in that growth is taking place in other counties of the metropolitan area leaving inner core cities and counties with mounting problems but limited growth in sales and property taxes. As author Joel Jarreau demonstrated in his book *Edge City: Life on the New Frontier*, new development and sales tax base continue to build away from the core.

While new technology of the information age reduces the need for white collar industries to cluster around core areas, tax disadvantages such as the one being addressed by this bill make it more difficult for core city and core county shop owners and merchants to effectively compete. During the last 5 years, the Dallas central business district has lost 39 percent of its tax base. This represents a large decrease for the total property tax base of both Dallas County and the city of Dallas.

NACO did another survey last fall on unfunded mandates. Counties were asked to estimate the cost of 12 unfunded mandates that particularly impact local governments. The results of the survey were tabulated by Price Waterhouse. The cost of just 12 unfunded mandates were projected to be costing county governments \$4.8 billion a year. The cost over the next 5 years was projected to be \$33 billion. I have a copy of that report and would appreciate it being included in the record today.

NACO, the governors, legislators, mayors, and school officials are supporting legislation to deal with future unfunded mandates. I do not want to get into that legislation today, and I know there are sponsors here, but I want to make the point that we need financial relief on unfunded mandates and the Federal Government situation we know is now so tight that we do not expect major new Federal budget aid reforms, but we expect Congress to help us by removing legal roadblocks in our efforts to collect taxes, existing taxes, for State and local governments.

The amounts involved are large and significant. Mr. Chairman, we appreciate and again thank you for your leadership on this issue. NACO, supported by county officials all over the country, pledge to work closely with you and other Senators in sponsoring this bill for the passage of S. 1825 this year.

Thank you.

[The prepared statement of Mr. Jackson and the information referred to follow:]

PREPARED STATEMENT OF JIM JACKSON, NATIONAL ASSOCIATION OF COUNTIES

I am Commissioner Jim Jackson of Dallas County, TX and I am testifying on behalf of the National Association of Counties (NACo).¹ I also serve as the Vice

¹The National Association of Counties is the only national organization representing county government in the United States. Through its membership, urban, suburban and rural counties join together to build effective, responsive county government. The goals of the organization are to: improve county government; serve as the national spokesman for county government; serve

Continued

Chair of NACo's large urban county caucus which is made up of the 70 largest counties in the Nation.

We appreciate the opportunity to testify on the proposed Tax Fairness for Main Street Business Act (S. 1825). With the fiscal stresses facing counties, cities and states, this legislation is very important to us. The National Association of Counties strongly supports this Bill. We also have been requested by the Government Finance Officers Association (GFOA) to state that the association wants to go on record in support of S. 1825. GFOA represents 12,600 officials serving in cities, counties, school districts and other special districts in the United States and in Canada.

We commend you, Mr. Chairman, for your leadership in drafting a Bill that has the support of governors, legislators, county commissioners, mayors and school officials. While your Bill requires collection of local sales taxes as well as state sales taxes, there still will be only one tax rate in each state. This makes it simpler for mail order companies to compute and collect the tax and easier for customers to understand it. The collection of all sales taxes in a state is essential to holding together this broad intergovernmental coalition.

I know it will be said many times at these hearings but it needs repeating: *We are not talking about a new tax on consumers.* Your Bill addresses existing sales taxes that consumers pay everyday when making purchases from their local clothing, jewelry, appliance and furniture stores. Your Bill will require collection of existing sales taxes when making purchases through catalogues, TV shopping and other mail order sales. The taxes already are on the books. Your Bill only requires that existing taxes be paid on all sales—not just the ones at the local shopping centers. Somehow, this essential message has to get to all consumers. We are not asking for a new tax.

Many of our local retailers are at a distinct disadvantage in competing with out of state mail order companies. In many of the urban counties in Texas, the combined state and local sales taxes are as high as 8.25 percent. Sales taxes range from 6.25 percent to 8.25 percent. A mail order company has a huge advantage when looking at a difference of around 8 percent in the final cost of a purchase.

I had some difficulty in getting good, sound statistics on the impact of mail order sales on local retailers in Dallas County. But, it is clear that four retail industries particularly are hard hit in our area: furniture, computers, jewelry and specialty clothing. I have been told by the owner of one large furniture store that he knows he is competing with furniture outlets in North Carolina, West Virginia and several other states. Even figuring in their freight costs, they can underprice him because of the 8 percent sales tax advantage.

The fast growing computer industry has to be impacted very heavily by mail order sales. Consumers can go to a local computer store and determine exactly what computer brand and optional equipment they want. It will even be demonstrated for them. They then can go to an electronics catalogue sales company and order the same equipment but at an 8 percent savings.

In discussing the collection of out-of-state sales taxes with the Texas Comptroller's office, I was told that boat sales, both recreational and commercial, also had been a problem.

The state passed legislation several years ago requiring the registration of boats. As part of the registration, there is a requirement of proof of payment of the sales tax. The same is true for airplanes. Since Texas does not have an income tax, it is more difficult to track down taxes paid on major purchases than in other states.

I also was told by the Comptroller's office that they have entered into agreements with a number of out of state mail order companies about collecting the sales tax for sales made in Texas. The Spiegel Company voluntarily agreed a few years ago to collect sales taxes and to remit the revenue to the state of Texas. This is a large mail order company that sells a wide range of merchandise. I understand that one of the TV home shopping networks also agreed to collect the tax on sales in Texas.

The point is that some of the taxes on mail order sales already are being collected. If it can be done by some mail order companies, why can't it be done by all of them?

Let me now turn to the impact on state and local governments in not having these tax revenues and the property tax roll impact of this unfair competition. NACo recently completed a fiscal survey of the 100 or so largest counties in the Nation. The survey shows that the improvement in the economy has yet to reach many urban counties as they struggle with difficult fiscal problems.

More than half of the counties responding to the survey said they have had to make reductions in staff and expenditures to meet balanced budget requirements.

as a liaison between the Nation's counties and other levels of government; achieve public understanding of the role of counties in the federal system.

Unfunded federal and state mandates and the burden of fighting increasing crime are major causes of this budgetary stress, the survey showed. Most revealing is that counties are not optimistic about their fiscal future. Overall, only the slightest improvement in fiscal conditions is anticipated over the next 3 years.

Sixty (60) percent of the counties reported raising selected fines, fees and charges for fiscal year 1993, and the same percentage imposed selected budget reductions to meet balanced budget requirements. More than one-third had to raise property tax rates, postpone scheduled capital projects and freeze hiring. Similar actions are reported as anticipated or already enacted for fiscal year 1994, and budgetary actions such as drawing from reserve funds seem to be gaining in frequency.

During the next 2 months, NACo will be conducting a similar fiscal survey of small to medium sized counties, based on population, and will release the results in June.

Dallas County also is experiencing a problem shared with many other core cities and core counties in that growth is taking place in the outer counties of the metropolitan area, leaving the innercore with mounting problems but limited growth in sales and property taxes.

In addition to serving as County Commissioner I serve on the five member board of the Greater Dallas Appraisal District that furnishes the taxable value for all taxing jurisdictions in Dallas County.

While the City of Dallas and Dallas County population grew by 11 percent and 19 percent respectively between 1980 and 1990, the two connecting counties to the north, Denton County and Collin County, grew by 95 percent and 84 percent respectively.

As Author Joel Jarreau demonstrated in his book new development and new tax bases continue to build away from the core. While new technology of the information age reduces the need for white collar industries to cluster around core areas, tax disadvantages, such as the one being addressed by this Bill, make it more difficult for core city and county shop owners and merchants to effectively compete.

During the last 5 years the Dallas central business district has lost 39 percent or \$1.5 billion of its tax base. This represents a large decrease in the total tax base of both Dallas County and the City of Dallas.

NACo did another survey last fall on unfunded federal mandates. Counties were asked to estimate the cost of 12 unfunded mandates that particularly impact local governments. The results of the survey were tabulated by price waterhouse, the International Accounting firm. The cost of just these 12 unfunded mandates were projected to be costing county governments \$4.8 billion a year. The cost over the next 5 years was projected to be \$33 billion. I have a copy of the report and I would appreciate it if the executive summary could be included in the record.

NACo, the governors, legislators, mayors and school officials are supporting legislation to deal with future unfunded federal mandates. I do not want to get into the details of this legislation at this hearing. But, I want to make the point that we need financial relief on unfunded mandates.

The federal budget situation is now so tight that we do not expect Congress to pass any major new federal budget aid programs. But, we expect Congress to help us by removing a legal road block in our efforts to collect existing taxes. We are not asking for new funds or new programs. We only want the right to collect the taxes owed to us.

The amounts involved are large and significant. I can assure you that \$150 million to \$180 million each year in increased estimated revenues means a lot to the state of Texas. It would help the state budget and indirectly benefit the counties, cities, school districts and transit districts. It is estimated that another \$60 million a year would be collected on behalf of cities, transit districts and school districts in Texas.

In addition to the other jobs mentioned today, I am also chairman of the North Central Texas Council of Governments Regional Transportation Council or R.T.C. The R.T.C. is designed as the regional Dallas-Ft. Worth Metropolitan Planning Organization for transportation and for local participation in both state planning and mandated participation in the Federal Intermodal Surface Transportation Efficiency Act (ISTEA).

Included in our regional transit plan are our local mass transit agencies. The Dallas Area Rapid Transit District (DART) is partly funded with a one cent sales tax. The 2010 Dallas-Ft. Worth regional transportation plan as developed by our metropolitan planning organization, the regional transportation council, shows a funding need over the next 16 years of \$16.6 billion and identified funding of \$8.9 billion leaving a shortfall of \$7.7 billion. Collection of taxes identified in this Bill would be a step toward realizing this funding need.

Mr. Chairman, I again want to thank you for your leadership on this issue. NACo, supported by county officials all over the country, pledges to work closely with you and the other Senators sponsoring the Bill to pass S. 1825 this year.

The CHAIRMAN. Thank you, Mr. Jackson.
Mr. Scholz.

STATEMENT OF CHARLES W. SCHOLZ, MAYOR, QUINCY, IL

Mr. SCHOLZ. Thank you, Mr. Chairman and members of the Committee. I am Charles W. Scholz, the Mayor of Quincy, IL, a town in Western Illinois on the banks of the Mississippi with a population of 40,000. I appear before this Committee today on behalf of both the United States Conference of Mayors and the National League of Cities, and I appreciate the opportunity to express our strong support for S. 1825, the Tax Fairness for Main Street Business Act of 1994.

The issues surrounding the collection of sales tax by out-of-State firms are not new to local government. It was back in 1988 that a coalition of State and local governments developed a consensus approach to the collection of out-of-State sales tax. It is with great satisfaction that we now find the consensus approach developed by the State and local coalition included in S. 1825, and the U.S. Conference of Mayors and the National League of Cities wish to express our sincere appreciation to Chairman Bumpers for his leadership on this very important issue.

Mr. Chairman, I would like to begin by making several important points. First, the proposal before the Committee is not a new tax. In fact, consumers are certainly required currently in my State by law to pay sales taxes when they purchase goods from out-of-State retailers. However, many do not. And out-of-State retailers are not presently required to collect and remit sales taxes.

What we are supporting is simply correcting this Federal loophole which improperly immunizes direct marketing firms from their responsibility to collect and remit existing sales taxes. Second, in the current era of high technology and information super-highway, direct marketing firms are now more than ever capable of collecting and remitting State and local sales taxes with minimum expense. Third, S. 1825 further minimizes the effort and expense for a direct marketing firm by requiring a single tax rate for each State either unified or in lieu for the purposes of this act and exempting smaller forms from the requirement to collect the tax, as you mentioned, Mr. Chairman.

The potential revenue benefits from this legislation for State and local governments have been well documented. Attached to my written testimony is an estimated revenue chart for 1992 prepared by the Advisory Council on Intergovernmental Relations. The Illinois Department of Revenue estimates that my city of Quincy would have gained \$1.1 million in 1992 from the collection of this sales tax, a significant increase for our city in that our 1993 budget was approximately \$19 million, of which \$4.8 million came from sales tax revenues.

The CHAIRMAN. What is the budget of your police department, Mayor Scholz?

Mr. SCHOLZ. Our police department budget is about \$4.5 million. And for instance, in the proposal of the Clinton administration for

the new crime bill we would like to get four new officers. This would help us meet our local obligation, Senator, to be able to do that and increase public safety.

In addition to the direct revenue benefits for State and local governments, the Tax Fairness for Main Street Business Act would help level the playing field, so to speak, for our local small businesses. The economic realities of infrastructure deficits and crime have made it difficult enough for smaller businesses to survive, let alone grow, in an increasing number of cities and towns. We have witnessed in Quincy and other cities the closing of small businesses and the ensuing loss of retail jobs and overall decline in economic conditions.

Last summer, our citizens banded together courageously to fight the great flood of 1993, and unfortunately, we lost our battle to keep our bridge open in Quincy, which was the only bridge in about a 200 mile stretch of river. As a result, for 71 days 40 percent of our retail economy was cut off from the City of Quincy. Because of that, one of our large retail department stores closed and 180 people lost their jobs trying to do business on Main Street in Quincy, IL.

So it is very tough out there, and we feel that even though these problems are being addressed in a cooperative manner by government at the local, State, and Federal levels, we find it unforgivable that in addition to the impediments facing small business, which we are working together to address, our local retail communities are placed at a competitive disadvantage vis-a-vis direct marketing firms.

The competitive advantage enjoyed by direct marketing firms is not limited to the protection from the collection of State and local sales taxes. Direct marketing firms are dependent upon the services and infrastructure provided by our State and local governments. Our roads are used in product delivery. Our police protect product delivery. Our courts handle cases of nonpayment and product theft.

Senator Bumpers mentioned the issue of the landfills, we have millions of mail order catalogs ending up in local landfills every year. That is a huge cost to my city. Local governments have to cover the expense of disposal of those catalogs, and local governments, by their very nature, must then turn to the public to pay for these increased costs. And in present times it has become increasingly the local retail community which has been forced to charge higher sales taxes and pay higher income taxes and user fees to cover those infrastructure costs.

Unfortunately, the smaller businesses which now play such a large role in sustaining our economy and providing for economic recovery have found it increasingly difficult to survive or expand in many cities. This basic problem has found expression in the Empowerment Zone and Enterprise Community Program enacted into law in 1993. As both the administration and many members of Congress expressed during the debate on empowerment zones and enterprise communities, the underpinning intent of that program is to attract new small to medium-sized businesses into distressed urban and rural cities and towns and to provide incentives

to existing small businesses to expand their activities and thus provide new job opportunities.

The United States Conference of Mayors and the National League of Cities actively supported the creation of this demonstration program and agree with the need to find innovative new weapons in the battle against decay and unemployment in our cities. In our opinion, the Tax Fairness for Main Street Business Act of 1994 is a necessary tool which must also be employed to not only assist the limited numbers of communities which are eventually going to be designated as EZs and ECs, but also the hundreds of communities which will apply but not be designated.

It is for these reasons, Mr. Chairman and members of the Committee, that the United States Conference of Mayors and the National League of Cities strongly urge Congress to pass the Tax Fairness for Main Street Business Act this year.

I would like to thank you, Mr. Chairman, both for the opportunity to testify here today and for your leadership on this very important issue.

[The prepared statement of Mayor Scholz follows:]

PREPARED STATEMENT OF MAYOR CHARLES W. SCHOLZ, UNITED STATES CONFERENCE OF MAYORS AND NATIONAL LEAGUE OF CITIES

Mr. Chairman and members of the committee, I am Charles W. Scholz, Mayor of Quincy, IL. I appear before this committee today on behalf of both the United States Conference of Mayors and the National League of Cities, and I appreciate the opportunity to express our strong support for S. 1825, the "Tax Fairness for Main Street Business Act of 1994."

The issues surrounding the collection of sales tax by out-of-state firms is not new to local governments. It was back in 1988 that a coalition of state and local governments developed a consensus approach to the collection of out-of-state sales tax that accomplished two critical objectives. First, the consensus approach was designed to ensure that both states and local governments share equitably in the revenues generated by the collection of sales tax. Second, the consensus approach was designed to simplify the collection of sales tax for direct marketing companies by establishing an in-lieu fee in states where the local sales tax rates are not uniform.

It is with great satisfaction that we now find the consensus approach developed by the state and local coalition included in S. 1825, and the U.S. Conference of Mayors and the National League of Cities wish to express our sincere appreciation to Chairman Bumpers for his leadership on this very important issue. We are also pleased to join in a reinvigorated coalition effort with the local retail community in supporting this new legislation.

Mr. Chairman, I would like to begin by making several important points. First, the proposal before the committee is not a new tax. In fact, consumers are currently required by law to pay sales taxes in their home jurisdictions when they purchase goods from out-of-state retailers; however, many do not, and out-of-state retailers are not presently required to collect and remit sales taxes. What we are supporting is simply correcting this Federal loophole which improperly immunizes direct marketing firms from their responsibility to collect and remit existing sales taxes.

Second, in the current era of high technology and the information superhighway, direct marketing firms are now, more than ever, capable of collecting and remitting state and local sales taxes with minimum expense.

Third, S. 1825 further minimizes the effort and expense for direct marketing firms by requiring a single tax collection rate for each state, either unified or "in-lieu," for the purposes of this act; and exempting smaller firms from the requirement to collect the tax.

The potential revenue benefits from this legislation for state and local governments have been well documented. Attached to my written testimony is an estimated revenue chart for 1992, prepared by the Advisory Council on Intergovernmental Relations, which I believe speaks for itself. As you can see, the State of Illinois would have gained \$213.0 million in 1992 from the collection of state and local sales taxes. Of that total, The Illinois Department of Revenue estimates that Quincy would have gained \$1.1 million. This would be a significant increase for my city.

In calendar year 1993, our total budget was approximately \$19 million, of which \$4.8 million came from sales tax revenues. The estimated \$1.1 million would represent a 23 percent increase in sales tax revenues raised for the city of Quincy.

In addition to the direct revenue benefits for state and local governments, the Tax Fairness for Main Street Business Act would help level the playing field so-to-speak for local small businesses. The economic realities of infrastructure deficits and crime have made it difficult enough for smaller businesses to survive, let alone grow, in an increasing number of cities and towns. We have witnessed in Quincy and other neighboring cities the closing of many of our small businesses and suffered the ensuing loss of retail jobs and overall decline in economic conditions. These problems are being addressed in a cooperative manner by all levels of government; local, state, and Federal. However, we find it absolutely unforgivable that in addition to the impediments facing small businesses which we are working together to address, our local retail communities are placed at a competitive disadvantage vis-a-vis direct marketing firms which have the advantages of not only the existing and ever improving systems of mass communication and advertising, but are also free from the requirement to collect state and local sales taxes.

The competitive advantage enjoyed by direct marketing firms is not limited to the protection from the collection of state and local sales taxes. Direct marketing firms are dependent upon the services and infrastructure provided by state and local governments. Our roads are used in product delivery. Our police protect product delivery. Our courts handle cases of nonpayment and product theft.

To be more specific, let's look at the issue of landfill disposal. Millions of mail order catalogues end up in local landfills every year. As a result, local governments incur significant costs to cover the expense of disposal of these catalogues. However, local governments, by their very nature, must turn to the public to pay for these increased costs, and in present times it has increasingly become the local retail community which has been forced to charge higher sales taxes, and pay higher income taxes and user fees to cover these infrastructure costs. Therefore, the collection of sales tax from direct marketing firms will not only increase revenues for state and local governments, but also help spread the burden of waste disposal and other infrastructure improvements presently borne, in large measure, by the local retail community.

Mr. Chairman, America's cities and towns are at a pivotal juncture in their economic history. As we are all aware, the new economic revolution is fueled by smaller businesses that are adaptable and agile. The large corporations which provided so much of the job opportunities for our residents have become increasingly rare, resulting in a period of major job loss which continues today.

Unfortunately, the smaller businesses which now play such a large role in sustaining our economy and providing for economic recovery have found it increasingly difficult to survive or expand in many cities. This basic problem found expression in the Empowerment Zone and Enterprise Community (EZ/EC) program enacted into law in 1993. The enactment of the EZ/EC program resulted from a general agreement on both the economic and social need to provide opportunities for people to work in their communities, to become owners of small businesses in their communities, and to become leaders in their communities.

As both the administration and many members of congress expressed during the debate on empowerment zones and enterprise communities, the underpinning intent of the program is to both attract new small to medium sized businesses into distressed urban and rural cities and towns, and to provide incentives to existing small businesses to expand their activities and thus provide for new job opportunities.

The U.S. Conference of Mayors and the National League of Cities actively supported the creation of this demonstration program and agree with the need to find innovative new weapons in the battle against decay and unemployment in our cities. In our opinion the Tax Fairness for Main Street Business Act of 1994 is a necessary tool which must also be employed to not only assist the limited number of communities which are eventually designated as EZ's and EC's, but also the hundreds of communities which will apply but not be designated. All of these areas share the common need to encourage the creation and growth of local small businesses, a need which will not be satisfied by any federal economic development program alone.

It is for these reasons that the United States Conference of Mayors and the National League of Cities strongly urge Congress to pass the Tax Fairness for Main Street Business Act this year. This issue has been around for too long and needs to be resolved by Congress in an expedited fashion. I would like to thank you, Mr. Chairman, for both the opportunity to testify here today and your leadership on this very important issue.

Estimated Revenue Potential on Unfaxed Interstate Mail Order Sales, 1990-1992
(in million)

	State Mail Order Base	Nexus- Adjusted Base	Estimated Revenue Potential	Estimated Revenue Potential	Estimated Revenue Potential
	1990	1990	1990	1991	1992
Alabama	\$861.5	\$775.9	\$30.8	\$32.6	34.6
Arizona	868.8	782.5	38.4	40.7	43.2
Arkansas	495.5	446.3	17.7	18.8	19.9
California	8,911.7	8,026.2	394.1	417.8	442.9
Colorado	888.2	800.0	23.6	25.0	26.5
Connecticut	1,217.2	1,096.3	81.4	86.3	91.5
District of Columbia	217.4	195.8	11.5	12.2	12.9
Florida	3,474.4	3,129.2	183.7	194.8	206.4
Georgia	1,603.8	1,444.5	57.3	60.7	64.4
Hawaii	315.9	284.5	11.3	12.0	12.7
Idaho	220.2	198.3	9.8	10.4	11.1
Illinois	3,367.1	3,032.5	189.5	200.9	213.0
Indiana	1,358.1	1,223.2	60.1	63.7	67.5
Iowa	685.1	617.0	24.2	25.7	27.2
Kansas	639.3	575.8	24.3	25.7	27.3
Kentucky	799.3	719.9	42.4	45.0	47.7
Louisiana	886.0	798.0	31.4	33.2	35.2
Maine	301.6	271.6	12.7	13.5	14.3
Maryland	1,514.4	1,364.0	66.7	70.7	75.0
Massachusetts	1,978.9	1,782.3	84.7	89.8	95.2
Michigan	2,480.3	2,233.9	83.6	88.6	93.9
Minnesota	1,204.3	1,084.7	58.6	62.1	65.8
Mississippi	479.8	432.1	25.7	27.3	28.9
Missouri	1,299.3	1,170.2	49.0	52.0	55.1
Nebraska	385.9	347.6	16.3	17.2	18.3
Nevada	331.8	298.8	16.9	17.9	19.0
New Jersey	2,801.0	2,522.7	159.0	168.5	178.6
New Mexico	308.8	278.1	13.9	14.7	15.6
New York	5,666.4	5,103.3	190.2	201.6	213.7
North Carolina	1,536.5	1,383.9	41.2	43.6	46.3
North Dakota	133.2	120.0	5.9	6.2	6.6
Ohio	2,738.8	2,466.7	115.4	122.3	129.6
Oklahoma	700.0	630.5	28.1	29.8	31.6
Pennsylvania	3,206.3	2,887.7	164.1	173.9	184.3
Rhode Island	273.1	246.0	16.3	17.3	18.3
South Carolina	755.2	680.2	33.7	35.8	37.9
South Dakota	143.5	129.3	5.1	5.4	5.8
Tennessee	1,206.5	1,009.3	55.1	58.4	61.9
Texas	4,058.7	3,655.4	213.7	226.5	240.1
Utah	344.2	310.0	15.4	16.3	17.3
Vermont	142.3	128.1	5.0	5.3	5.7
Virginia	1,786.9	1,609.4	53.2	56.4	59.8
Washington	1,314.7	1,184.1	69.8	74.0	78.4
West Virginia	356.4	321.0	19.1	20.2	21.5
Wisconsin	1,255.0	1,130.3	52.9	56.0	59.4
Wyoming	102.8	92.5	2.8	2.9	3.1
TOTAL	65,530.3	59,019.6	2,905.5	3,079.9	3,264.7

The CHAIRMAN. Thank you, Mayor Scholz.

Ms. Mee, I am happy to tell you one of my very strong chief co-sponsors is Senator Graham of Florida. We are glad to have you with us. Please proceed.

**STATEMENT OF JANICE MEE, PAST PRESIDENT, FLORIDA
SCHOOL BOARDS ASSOCIATION, SARASOTA, FL**

Ms. MEE. Thank you, Senator. I appreciate that and regret Senator Graham is not with us this afternoon.

My name is Janice Mee, and I am pleased to be here today. I appreciate the opportunity to testify about Senate bill 1825, legislation that would close a gaping loophole in our tax laws and prove to be an enormous benefit to our Nation's school children. I have been an elected member of the Sarasota County Board for 8 years and am the immediate past president of the Florida School Boards Association. I am here today on behalf of NSBA, my local Sarasota board, and the over 95,000 local school board members responsible for governing local public school districts across the Nation.

This statement also has been endorsed by the National Education Association, which represents over 2.2 million public school teachers, education support personnel, and the higher education faculty, as well as by the American Association of School Administrators.

There are three levels of impact that will be felt by public schools if this bill becomes law. First, every school district in the country stands to benefit from the boost to the fiscal health of State and local governments, and in recent years we have seen State and local governments struggle to maintain fiscal strength. Shrinking budgets and diminishing property values have meant hard choices.

State and local policymakers recognize that their decisions literally determine what resources will or will not come into our school children's hands. Do we fund that hospital wing or develop that high school science program? Do we fix that road or put a new roof on that badly leaking gymnasium? These are real problems. A recent study analyzing school facilities found that fully 74 percent of our Nation's schools need to be replaced or extensively modernized in order to be appropriate learning environments. As lawmakers, you understand all too well that dilemma, and as a school board member I am on the front lines of these impossible decisions.

The \$3.9 billion the Tax Fairness Act would bring to State and local governments will help State and local governments out of this fiscal bind. Many States will have a little more freedom in making those tough choices and will be able to more fully invest in the future of our school children.

The Department of Revenue in Florida has calculated that \$235.7 million would be collected in fiscal year 1995 if this bill became law, and that about \$75.3 million more would go to public schools as a result in fiscal year 1995. That could translate into five new elementary schools to relieve over-crowding, salaries for 150,000 teachers, and at least 6400 new computers to bring school children into the information age.

The CHAIRMAN. Do you think you could get Governor Chiles to drop his billion-and-a-half-dollar lawsuit against the Government if we pass this bill?

[Laughter.]

Ms. MEE. I would be willing to talk to you another time on the immigration question, Senator.

Schools also will benefit generally from the equity put back into local business. Local small businesses no longer will be in competition with an out-of-State Goliath with a tax break. They will have a fighting chance to prosper, and their prosperity will be felt in the community, in the property values, in the tax base, and therefore in the schools.

There is a second level of impact on schools that the Tax Fairness Act will bring. There are several States, notably Michigan and South Carolina, in which education stands to get a direct boost from this bill. Those States have decided to dedicate to education all or most of the new revenues raised from collecting mail order taxes if this federal loophole is closed. In Michigan, for instance, 60 percent of the first 4 percent and 100 percent of the next 2 percent in mail order sales will go to schools. The Michigan School Boards Association has estimated that once the Tax Fairness Act goes into effect 60 million new dollars will go to Michigan schools. The only impediment to bringing these much-needed funds directly to schools is inaction by Congress.

Finally, there are at least 10 States that have earmarked all or a portion of their general sales tax revenue for education. In those States, the taxes collected as a result of the Act will have a direct benefit to schools. Those new taxes will increase the pot of money that already has been dedicated to education. It is worth noting that while earmarking a variety of revenue streams is a widespread phenomenon, the sales tax has been by far the most popular revenue source to earmark for education, and that makes this Act even more critical for schools. Several States have a particularly high reliance on sales tax to fund their education programs: South Dakota, 56.8 percent comes from taxes; and Michigan, recently, as you know, turned to sales tax for their funding of education.

In conclusion, Mr. Chairman, NSBA and the Florida School Boards Association, along with the National Education Association and the American Association of School Administrators, urge the Committee to support public education by passing Senate bill 1825. This legislation is of paramount importance to our Nation's school children and will provide critical dollars for State and local governments to invest in education.

We would be happy to assist the Committee as you address this issue. And on behalf of these associations, I thank you for the opportunity to testify.

[The prepared statement of Ms. Mee follows:]

PREPARED STATEMENT OF JANICE MEE, NATIONAL SCHOOL BOARDS ASSOCIATION AND THE NATIONAL EDUCATION ASSOCIATION

My name is Janice Mee. I am pleased to be here today and I appreciate the opportunity to testify about S. 1825, the Tax Fairness for Mainstreet Business Act of 1994—legislation that would close a gaping loophole in our tax laws and prove to be an enormous benefit to our Nation's school children.

I have been an elected member of the Sarasota County School Board for 8 years and am the Immediate Past President of the Florida School Boards Association. I am here today on behalf of NSBA, the Sarasota County School Board, and the over 95,000 local school board members responsible for governing local public school districts across the Nation. This statement also has been endorsed by the National Education Association, which represents over 2.2 million public school teachers, education support personnel and higher education faculty, as well as by the American Association of School Administrators.

II. PUBLIC SCHOOLS RELY ON STATE AND LOCAL TAX REVENUE

I am here to discuss an inequity in our tax laws. It's one that can easily be remedied, and one that—once corrected will send an estimated \$3.9 billion into the state and local funding stream. The relative health of the revenue stream at the state and local level has a considerable impact on the ability of public schools to deliver quality education. Public school districts obtain the vast majority of their budget from state and local governments. In fact, in the 1990-91 school year, 48.3 percent of the

revenue used to run our schools came from state governments, 44.5 percent was provided at the local level and the remaining 6.2 percent was provided by the Federal Government. Clearly, an additional \$3.9 billion in tax revenue collected at the state and local level will have a large impact on schools. Today I would like to discuss the problem that the Tax Fairness Act would remedy, and then describe the ways in which the Tax Fairness Act will help our schools.

III. THE CURRENT PROBLEM

What problem does will the Tax Fairness Act remedy? Currently, out-of-state mail-order businesses may owe sales and use taxes, but, oddly, they are not required to pay them. This situation resulted from a 1967 United States Supreme Court decision in *National Bellas Hess, Inc. v. Department of Revenue of Illinois*. In that case, the Supreme Court held an out-of-state mail-order company did not have enough direct connection or "nexus", to be absolutely required to pay the sales and use taxes it owed. They also claimed that such a requirement would burden interstate commerce.

In 1992, the Supreme Court moderated its stance in *Quill Corporation v. North Dakota*. That case held that the "nexus argument" no longer was viable, but maintained that states are still prohibited from requiring out-of-state mail-order companies to remit state and local taxes. With the tax collection ban still in place, though, the court recognized that states and localities have a huge loss of revenue and local businesses are at a real competitive disadvantage to mail-order firms. The Court decided that this is a matter rightly resolved by Congress.

IV. THE SOLUTION: PASS THE TAX FAIRNESS ACT

I believe that, in the Tax Fairness Act, Congress has found that resolution. The Act permits the collection of state and local taxes owed by out-of-state mail-order firms. It puts an end to the significant revenue loss now suffered by state and local governments and gives local business a more level playing ground. The Tax Fairness Act is quite moderate in its approach. It exempts any mail-order companies that have less than \$3 million in sales when its sales in the state are less than \$100,000. It also requires states to provide access to information and forms to facilitate the process of remitting the taxes. Let me emphasize one key fact—S. 1825 is not a bill which increases taxes—it simply provides the authority for state and local government to collect taxes already owed.

V. TAX FAIRNESS BENEFITS ALL SCHOOLS

Now I'd like to tell you how this bill would help school children. This connection becomes clear when we examine the major sources of revenue for states and localities to fund schools. For states, most school funding comes from general revenues. In 1990, 32 percent of states' revenues came from personal income tax and a full 33.2 percent came from the general sales tax. Locally, property tax is the main source of tax revenue with other taxes such as sales and income tax also in the mix. Undoubtedly, then, the infusion of \$3.9 billion in sales and use taxes will make a significant contribution to the pool of funds available for education.

VI. SCHOOLS PROSPER WHEN STATE AND LOCAL GOVERNMENTS PROSPER

There are three levels of impact that will be felt by public schools if this bill becomes law. First, every school district in the country stands to benefit from the boost to the fiscal health of state and local governments. And in recent years, we have seen state and local governments struggle to maintain fiscal strength. Shrinking budgets and diminishing property values have meant hard choices.

State and local policy-makers recognize that their decisions literally determine what resources will or won't come into our school children's hands. Do we fund that hospital wing or develop that high school science program? Do we fix that road or put a new roof on that badly leaking gymnasium? These are real problems. A recent study analyzing school facilities found that fully 74 percent of our Nation's schools need to be replaced or extensively modernized in order to be appropriate learning environments. As lawmakers, you understand all too well that dilemma and as a school board member, I am on the front lines of those impossible decisions. The \$3.9 billion the Tax Fairness Act would bring to state and local governments will help state and local governments out of this fiscal bind. Many states will have a little more freedom in making those tough choices and will be able to more fully invest in the future of our school children. The Florida Revenue Department has calculated that \$235.7 million is expected to be collected in FY 1995 and that about \$75.3 million more dollars will be able to go to public schools as a result. That could translate

into five new elementary schools to relieve overcrowding, salaries for 150,000 teachers and at least 6,400 new computers to help bring our children into the information age.

Schools also will benefit generally from the equity put back into local business. Local small businesses no longer will be in competition with an out-of-state goliath with a tax break. They will have a fighting chance to prosper and their prosperity will be felt in the community, in the property values, in the tax base and, therefore in the schools. Perhaps the title of the bill should be amended to read, "The Tax Fairness for Mainstream Business and Increased Funding for Public Schools Act of 1994."

VII. BELLAS HESS LAWS IN THE STATES

There is a second level of impact on schools that the Tax Fairness Act will bring. There are several states, notably Michigan and South Carolina, in which education stands to get a direct boost from this bill. Those states have decided to dedicate to education all or most of the new revenues raised from collecting mail-order taxes after this Federal loophole is closed. In Michigan, for instance, 60 percent of the first 4 percent and 100 percent of the next 2 percent in mail-order sales taxes will go to schools. The Michigan School Boards Association, has estimated, that once the Tax Fairness Act goes into effect, 60 million new dollars will go to Michigan schools. The only impediment to bringing these much-needed funds directly to schools is inaction by Congress.

VIII. SALES TAXES THAT FUND EDUCATION

Finally, there are at least 10 states that have earmarked all or a portion of their general sales tax revenue for education. In those states, the taxes collected as a result of the Tax Fairness Act will have a direct benefit to schools. Those new taxes will increase the pot of money that already has been dedicated to education. It is worth noting that, while earmarking a variety of revenue streams is a widespread phenomena—the sales tax has been by far the most popular revenue source to earmark for education. That makes the Tax Fairness Act even more critical for schools.

Several states have a particularly high reliance on sales taxes to fund their education programs. In South Dakota, 56.8 percent of their local contribution to the education budget comes from local sales taxes. In Louisiana, the sales tax provides 55.1 percent of the state share. Also, Michigan recently abandoned its use of property taxes to fund public schools and instead substituted revenues targeted from the sales tax. Their stake in ensuring that mail-order sales taxes do not go uncollected is clearly very high.

IX. CONCLUSION

In conclusion, Mr. Chairman, NSBA and the Florida School Boards Association, along with the National Education Association (NEA) and the American Association of School Administrators (AASA), urge the Subcommittee to support public education by passing S. 1825, the Tax Fairness for Mainstreet Business Act of 1994. This legislation is of paramount importance to our Nations school children and will provide critical dollars for state and local governments to invest in education. NSBA, NEA and AASA would be happy to assist the Subcommittee as you address this issue.

On behalf of NSBA, NEA and AASA, I thank you again for the opportunity to testify before the Subcommittee.

The CHAIRMAN. Ms. Mee, I was on the Charleston, AR, school board for 12 years. I told people I ran for governor to get off the school board.

Ms. MEE. I can understand that, Senator.

The CHAIRMAN. That was the worst job I ever had in my life. In a town of 1500, we are up to about 2500 now, but when I ran for governor we had about 1500 people. And you are being addressed right now by the school board attorney, the city attorney, and the whole South Franklin County Bar Association.

I want to thank all of you for your testimony and simply make one point that Mr. Jackson has already very poignantly made, and that is when I was governor I found that the firemen were the most powerful lobby in the State, and we were always reducing

their work hours or providing for other benefits. The mayors were always coming in and saying well, how about the money. And we would say that is up to you. And the States and the Federal Government are still imposing an incredible number of mandates on States and local jurisdictions without one dime to carry them out.

So other than just the fairness, the equitable part of this legislation, it is also one way that my colleagues and I can help cities and counties with these mandates, especially EPA mandates which are extremely costly. We have an opportunity here to do something that is righteous and correct and that will assist the local jurisdictions in meeting a lot of the mandates we impose on them with no money.

Senator Pressler.

Senator PRESSLER. Thank you. According to S. 1825, if a mail order firm does over \$100,000 worth of business within a particular State in 1 year the State would have authority to collect a sales tax. If the firm regularly hovers around the \$100,000 mark, could it be excessively audited?

In addition, what about a firm that has never done \$100,000 worth of business in a State, but has an exceptionally good Christmas season and unexpectedly finds itself above the \$100,000 mark in December? Would the company have to collect taxes retroactively for the year? I assume it would. In addition, would it then collect a tax throughout the following year, even if it fails to reach the trigger amount in that year? Does anyone have a comment on some of those problems?

Ms. MEE. Let me just address part of that and then perhaps my colleagues on the panel can address the latter part of your question. As part of Senate bill 1825 there is an "in lieu of" provision, the rate of which would be determined by each individual State. That, to me, seems to be perhaps a compromise that is part of this proposed legislation that would appeal to the smaller business person. And certainly, I think there does need to be some consideration, the concern was mentioned earlier, on the audit question.

Senator PRESSLER. How will health-related mail order businesses be treated? I understand that prescription drugs are generally exempt from any type of tax. What about health-related services, publications, and the sale of goods intended to raise money for medical research? I do not know what is going to become of the mail order drug companies under the Clinton health care plan, but maybe somebody here knows what would happen to them under this bill.

Mr. SCHOLZ. It is my experience in our State, Senator, that most of the health-related things are not subject to sales tax in our State. Certainly, you are right, prescription drugs I know are not, and I know there are some other exceptions. I think to get back to what Senator Bumpers stated, it is 87 percent of the companies out there that we are really not concerned about, it is that 12 percent that is doing 88 percent of the business that is pretty much concentrated in these areas of furniture, jewelry, computer equipment, and that sort of thing.

Senator PRESSLER. Now, looking at funding for education, I know that in my home State of South Dakota, we give about 56 percent of sales tax revenue to education. So I think both the NEA and the

school boards have united on this issue, is that right? This is one issue you agree upon, is that correct?

Ms. MEE. Yes, sir.

Senator PRESSLER. Is it the first issue in history on which the NEA and school boards agreed?

Ms. MEE. No, I do not believe so.

Senator PRESSLER. Is this history in the making?

Now, in the State of Florida, where you are from Ms. Mee, you do not have an income tax, is that correct?

Ms. MEE. That is correct.

Senator PRESSLER. How much do you rely upon sales tax as compared to property tax?

Ms. MEE. The economy of Florida is very reliant on the sales tax, I can tell you that. I can also tell you that on the capital side where many school districts in Florida are hurting due to growth and due to declining revenues, 15.5 percent of my income on the capital side comes from the sales tax. That can be tracked directly.

Senator PRESSLER. 15 percent.

Ms. MEE. Yes.

Senator PRESSLER. For education.

Ms. MEE. That is correct, on the capital side of my budget. In Florida, our school budgets are separated, capital and operations.

Senator PRESSLER. Okay. Now, how much of that budget comes from property taxation in Florida?

Ms. MEE. Certainly, a great deal comes from ad valorem, and it is a very complicated funding formula in Florida for education and we are basically funded to a great extent from ad valorem.

Senator PRESSLER. If this bill passes, how much will Florida get?

Ms. MEE. It is projected that we would stand to receive \$73 million in fiscal year 1995.

Senator PRESSLER. \$73 million. And how much would that increase your budget?

Ms. MEE. For my budget personally in Sarasota County that would be several hundred thousand dollars, Senator, and that would be a very significant increase for us right now in a very, very tight fiscal time.

Senator PRESSLER. Are you getting revenues from gambling down there?

Ms. MEE. I would like to answer you this way, Senator: I just had them pull some figures on our lottery, and since the lottery came into Florida my revenue has gone down. So it strictly was an exchange of dollars.

Senator PRESSLER. Okay. In any event, this bill would mean real money.

Ms. MEE. This would be real money, and I also believe this would be real money that we would actually see.

Senator PRESSLER. Now, for our mayor and a county commissioner. Is this real money we are talking about or just small change?

Mr. JACKSON. It is real money, Senator. You know, a million here and a million there—it is real money. It is in the range, I believe, of \$160 million for the State of Texas and \$60 million for local entities in Texas.

But in addition to the money it generates for us, one of the things we are fighting to do, again in core cities and core counties, is maintain a business structure and maintain a competitive Main Street business structure. And if we do not do that the rest of this really does not matter.

Senator PRESSLER. So in other words, in each of your cases—county, city, and school board—you see this piece of legislation as something that would strengthen the viability of your small businesses, your Main Streets, your education, your county governments and your city governments.

Any down-side to it that you can see from the point of view of your institutions?

Mr. JACKSON. You have pointed out some areas, and I suppose I can always find a down-side to anything, but I have not seen any. I could probably find one if I worked long enough, but again, whatever down-side we found, I think the up-side will outweigh it by many times.

Mr. SCHOLZ. Senator, in terms of the economic impact to our city, in addition to helping maintain the viability of our local businesses, we have a \$19 million budget which is balanced—we have not had to raise sales tax or property taxes—but most of that, of course, is tied up in personnel and we do not have much flexibility. This bill would result in an additional \$1.1 million to my city, which, as Senator Bumpers mentioned, is one-fourth of our police department budget, for instance.

That is money that we could use to address the landfill situation that we have which has been in some part contributed to by these mail order companies. It is money we could use for vital infrastructure that we do not have now, things that we would like to do to help revitalize our downtown area, our river front which was devastated by the flood last year. So it would have a huge impact on us.

We have about \$5 million in sales tax receipts from the State of Illinois, so this would increase that by approximately 20 percent.

Ms. MEE. I would just add, Senator, certainly one of the great needs in Florida right now is retrofitting our schools for technology. And certainly, if this money came in and came in on the capital side of the budget, there are very good places to put those dollars and very significant places, education reasons why we want to accomplish that retrofit and move forward with instructional technology.

Senator PRESSLER. Now, one final question. Again, I have a study cited here, although I want to be sure that I know the year and who paid for the study, so we will put that in the record.

According to Nathan Associates, Inc., Economic and Management Consultants, the impact of taxing interstate mail order sales on State and local government revenue "would not even add \$2 to every \$1,000 already collected by State and local governments from their own sources." How can we justify imposing such a great administrative burden on the sector of our economy that due to its extreme success has provided our Nation with over 5 million jobs? Maybe that is the other side of this story. What is your reaction to all this, to the Nathan Associates study—although I suspect the study was probably paid for by somebody.

The CHAIRMAN. I was going to say, why do we not put in the record who paid for this?

Senator PRESSLER. That is fine with me, and when it was done.

Mr. JACKSON. Senator, it is pretty well established in this country today that our business people are tax collectors. They collect income tax, Social Security, Medicare tax, sales tax, and in this case, for these same folks who are tax collectors now, I do not think would be that big a burden to add this very small area of collection.

Mr. SCHOLZ. The information we have, Senator, is attached to my testimony. It is provided by the Illinois Department of Revenue, and it indicates an increase to the State of Illinois in excess of \$200 million, which as I stated earlier would be an increase to my city of more than \$1 million. And this is coming from firms that are doing business, they are using our roads, our police, our courts, our landfills, they are using our public right-of-ways.

I have four TV direct marketing channels on our local cable franchise. They are undermining our local businesses but they are not paying anything to support the police and the roads and the court system and the landfills that they use. So we feel it would be fair to the citizens of Quincy, IL, if they paid that tax which is already in effect, and in so doing would hold down the property taxes and the sales taxes of our citizens.

Senator PRESSLER. I have been informed this study was paid for by the Direct Marketing Association in 1994. How is that?

The CHAIRMAN. I knew they had paid for it.

Senator PRESSLER. Anyway, let me conclude by saying I think you have made excellent presentations on the part of the local governments. Have we also received a statement from the National Education Association? We could, I am sure.

The CHAIRMAN. We have not.

Senator PRESSLER. Have they taken a position on this, do you know? The NEA?

Ms. MEE. They are part of this testimony. We have their endorsement for support. I am not sure if they have a separate statement.

The CHAIRMAN. They have endorsed the bill.

Senator PRESSLER. Thank you very much.

The CHAIRMAN. Senator Hutchison.

Senator HUTCHISON. Thank you, Mr. Chairman. Let me just ask you a question. Is there anything in your bill that gives a discount to the company that has to collect these taxes to offset their expenses?

The CHAIRMAN. No. They would get the same discount that local retailers get. For example, I do not know how many States do this, but in my State you get a slight discount for paying on time. Under the bill, Senator Hutchison, nobody can charge a tax or do anything differently or treat a mail order sales organization any differently than they treat their own companies.

We have some States in the country that do not have sales taxes. They would not be permitted to levy a tax under this bill because they do not levy one against their own merchants.

We tried to make it as equitable as we could. We are talking about a level playing field.

Senator HUTCHISON. Let me just ask the County Commissioner and the Mayor if you have seen a drop in the numbers of small retail businesses that do collect taxes. I do not know if restaurants collect taxes in your State. They certainly do in mine. Have you seen a drop in small businesses just in the last 5 years due to the competition and the unfunded mandates and the increased taxes in your two areas?

Mr. JACKSON. I think I would not tell you there has been a drastic drop in small business in Dallas County, TX, simply because of this particular issue. But I think this is part of a number of issues that make it much more difficult—as you know, Senator—to be in business and to compete today in a major urban area.

Senator HUTCHISON. Mayor?

Mr. SCHOLZ. Well, I would echo that, Senator. We are doing a lot of things in our central business district to try to make it easier for our small business people and to try to create and attract some new business opportunities. I think our folks are holding their own, but it is tough when they in effect by paying their own local sales tax and real estate tax have to subsidize a home shopping network which is using our local airwaves and then delivering its goods over our streets that are protected by our policemen, collecting their judgments in our court system, and is not paying anything.

So we feel that it is very important that they be treated fairly and we remove this loophole which allows those companies to unfairly take advantage of the system.

Senator HUTCHISON. Ms. Mee, did you have an opinion on that?

Ms. MEE. Just a comment, Senator. As a school system we are the largest employer in my county. But we are a county of small businesses and mom and pop operations. And certainly, for them this kind of competition is almost impossible for them to fight against.

Senator HUTCHISON. Thank you.

For the record, I was State Treasurer of Texas, and the estimates were that the State of Texas would gain approximately \$240 million from your bill that is currently lost, so it is a significant amount.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Pressler.

Senator PRESSLER. Yes, could I ask the panel what they would say if they were a Senator and received a letter from various groups opposed to this bill. We have the American Council for the Blind who oppose it, Disabled American Veterans, National Alliance of Senior Citizens, National Association of People with AIDS, Paralyzed Veterans of America, and other groups that have sent me a letter in opposition to the bill. What do we say to these groups?

Mr. JACKSON. Well, Senator, there is probably no answer that is going to make everyone happy. There is an old saying I am sure you have heard of "don't tax you, don't tax me, tax the man behind the tree." And certainly I could make an argument that this is a tax exemption and there really are no tax exemptions in this country, there are only tax transfers. If you do not pay your fair share of the total cost of government, somebody else is going to pay it.

So this is not an issue where we are talking about a reduction of taxes. We are talking about who is going to pay the taxes and whether it is going to be fair and equitable or not.

Certainly, everyone wants to be an exemptee and not a payor, and if I was in a position and you asked me directly do you want to pay more taxes I would probably say no. But you and I know, as those folks who take peoples' taxes and do things with them that we think needs to be done, that somebody has got to pay those taxes.

I do not think anybody can give you a good answer to those people except we all do what we have got to do.

Mr. SCHOLZ. I would just say this, Senator: First of all, it is not a new tax. It is required to be paid right now, even though it sometimes is not paid. Certainly, we are all very interested in maintaining access for those disabled persons to the goods and services that they need to purchase by mail, and that would not be diminished in any way and many of those are already, as Senator Bumpers mentioned, exempt.

But those disabled people are paying taxes right now in their local communities to support infrastructure, and I feel that these mail order companies that are making money off of them should pay taxes as well because they are using our cities' infrastructure.

Ms. MEE. I would also concur with my colleagues on the panel and feel that I am in a position where I, too, have to levy taxes. That is never an easy thing to do. But it is my job and my responsibility to see that our children do not hurt any more than they are hurting now.

We desperately need those dollars. I desperately need them where I am. I know Florida desperately needs those dollars for children and for the needs of our State. And I feel if an organization like the Boy Scouts is willing to collect them then I think that is a pretty good example to follow.

The CHAIRMAN. Senator Pressler, the point should be stressed, and it has not been yet, that in a sense this is not a new tax burden. The tax is in place right now and it is not being collected. And the enforcement of the collection is virtually impossible.

It is a paradox that the State of Maine, the home of L.L. Bean which does around \$750 to \$800 million a year in business, if you imposed a 6 percent tax on L.L. Bean for their mail order sales it would constitute roughly \$50 million a year. Now, I have ordered merchandise from L.L. Bean. They are a fine company. I do not expect Senator Mitchell to endorse my bill, but I can tell you that that seems almost like a travesty for a company to be doing that kind of business that if those sales were made by Main Street merchants would produce \$50 million for local jurisdictions and State jurisdictions.

But Maine, curiously, does the best job of collecting this tax of just about any State in the Nation. They have a little place on their State tax form, which says—it is line 17—"use tax or sales tax." And what they ask people to do on that is to list the figure for their mail order purchases for the preceding year.

Now, last year Maine collected \$1.9 million of the roughly \$14.3 million that they would have collected under this bill, and that is the best percentage by far that any State in the Nation collects.

When the argument is that this is somehow or other a new tax, it is not. It is just that it is not being collected. What we are doing, of course, is shifting the burden so that the tax can be collected. So the answer to Senator Pressler's question, what would you say to these organizations, I would simply say this is not a new tax. You are obligated to pay this tax right now and you are not doing it. And the reason you are not doing it is not your fault. You do not even know it exists. Virtually every State has that.

Finally, I misspoke earlier. I said there were three States that did not have any sales or use taxes. There are five: Alaska, Delaware, Montana, New Hampshire, and Oregon. So those States really would not have any interest in this bill because they could not levy a tax under this if they wanted to because they do not tax their own citizens.

Gentlemen, Ms. Mee, thank you very much for being with us. Your testimony has been very helpful to us.

Our third and last panel consists of Mr. Rudolph Regez, vice president and general counsel of the Swiss Colony Company, Monroe, WI; and Mr. Robert Edmund, president, Edmund Scientific Company, Barrington, NJ.

Mr. Regez, we are very pleased to have you, and Mr. Edmund. Your name happens to be first on my list, so would you please proceed?

STATEMENT OF RUDOLPH REGEZ, VICE PRESIDENT AND GENERAL COUNSEL, THE SWISS COLONY COMPANY, MONROE, WI

Mr. REGEZ. Thank you, Senator. I appreciate being here. I am general counsel for the Swiss Colony, a Wisconsin mail order company selling cheeses, gourmet foods, and related nonfood items to customers in the 50 States. Our company was founded in 1926 by Ray Coublie, the son of a Swiss farmer, and today is operated by his son and grandson. It was Mr. Coublie's idea in 1926 that people would buy and send gifts of Wisconsin cheeses that at that time were not available in most parts of the country. From that, the company has grown into a holiday mail order gift business employing 1000 people annually and approximately 6000 people during the holiday season.

I am here today because what Mr. Coublie conceived of in 1926 and what his descendants have built into a significant business Senate bill 1825 threatens to seriously impair. We are not talking about any competitive advantages that mail order enjoys by not being required to collect sales and use taxes. Our average order is around \$70, and the postage and handling added to that order is between \$6 and \$7, which alone more than offsets any perceived advantage we have. If anything, with ever-increasing postal rates and delivery costs which subsidize greatly our postal system, direct marketers are at a serious, widening disadvantage.

Indeed, if equity is the issue, compare the burden of collecting sales taxes on a local merchant with the burden on an out-of-State retailer. For a local retailer, the tax is simply added and collected at the register. Sales personnel need to consider the rules of only one State and not have the confusion over applicable State tax rates and exemptions. The nightmare for us in collection exists because every State applies different rules in determining a tax.

Some States tax food. Some, like Wisconsin, do not. There are different interpretations on exemptions. For example, some States exempt only certain types of foods. California does not tax our large dobosh torte but it does tax the small version called petit fours as a confection. Items we sell in our catalog which are not food, according to California, are popcorn, pretzels, cookies, crackers, unless they are soda crackers, graham crackers, or arrowroot crackers.

In the mail order food business, gift packages are in many instances partly food such as cheese and sausage and partly hardware and merchandise such as dishes, ornaments, or the container itself may be a reusable item such as a picnic or decorative basket. This compounds the problem of calculating the tax.

Also, our business, like many other mail order businesses, is directed primarily at the gift market. Some State tax administrators take the position that tax to be collected is the tax imposed by the State where the merchandise is delivered or received, and this seems to be the majority. But other States—California is a good example—say that a gift coming into the State from out of the State is not subject to either the sales or use tax. Hence, a company trying to collect the tax would be guilty of an illegal act.

Let us take a simple example. Let us assume Aunt Martha in Chicago orders the same gift package, a box containing cheese and a Santa Claus Christmas plate for each of her two nephews, one in Indianapolis, Indiana, and the other in Cleveland, OH. In Indiana, food is exempt, but Indiana takes the position if the item is a gift coming into the State it is fully taxable, even if it is a sack of flour. In Ohio, food is also exempt, but if over one-half of the value of the package is other than food then the whole package is taxed. If one-half or more is food, then the whole package is taxed. Also, I do not know about Iowa or Indiana, but some States like Wisconsin tax shipping and handling charges; others do not.

The point is there is no feasible way to ask Aunt Martha to know the rules with respect to every State where the gifts might be going. Including the information on each State in the catalog is just not feasible, even if the customer could follow it. Over 23 percent of our sales are still done by check, where the order is hand-written out and a check sent with it.

The problem is that if Aunt Martha becomes confused there is a great likelihood that she is not going to even order at all. She is not going to order the merchandise and not pay the tax because she is going to be afraid that we will not send her gift, that we will simply refund her money. So she will go someplace else.

The exemption problem is in no way particular to the food industry. From State to State there is a wide array of exemptions including everything from children's clothing, medicine, books, farm machinery, and tombstones. This does not even take into consideration the various exemptions provided to certain persons and institutions.

The in lieu of provisions do not help us. They in no way take into account the problems with the different exemptions and the different interpretations imposed by State administrators. It would also, we believe, confuse the customers in thinking as to why they are paying separate tax for separate things.

The Supreme Court in the Quill case recognized that the constitutional grant of power to Congress over commerce authorized Congress to make the final decision with respect to sales and use taxes. In exercising that power I am asking that we remember the basic principles behind the constitutional grant itself. As Webster stated in his argument in *Gibbons v. Ogden*, "the prevailing motive was to regulate commerce, to rescue it from the embarrassing and destructive consequences resulting from legislation in so many different States, and to place it under the protection of a uniform law."

I submit to you that the bill under consideration does not promote uniformity as suggested by Webster, rather because of the total absence of uniformity and application of exemption of the sales and use taxes by the State it will do just the opposite and could cripple, if not destroy, our industry. I strenuously urge that this bill not be moved on further.

In closing, I would like to say, sir, I have a list of business and consumer groups I would like to submit for the record. These are groups of good Americans who are supporting our efforts in this bill and they are concerned about the mail order shopping, not the sales tax.

[The prepared statement of Mr. Regez follows:]

PREPARED STATEMENT OF RUDOLPH F. REGEZ, DIRECT MARKETING ASSOCIATION

My name is Rudolph F. Regez, and I am Vice President and General Counsel of Swiss Colony, a Wisconsin-based mail order company which sells gourmet foods and other gift items to customers in all 50 states. We have total sales of approximately \$150 million per year. Although we may be a small company by Fortune 500 standards, we like to think that our company exemplifies the American model of free enterprise.

Swiss Colony was founded in 1926 as the first mail order cheese company in the United States. We came up with the idea of selling cheese, Austrian pastry, and small gift items through the mail. Our company grew quickly, because we had both a good product and a good idea. The concept was simple—promote and sell attractively packaged products as holiday gifts. Today we employ roughly 1,000 people year-round with employment expanding to over 5,000 during the Holiday Season.

We solicit our business primarily through catalogs and occasionally direct mail flyers. Our products are delivered primarily through UPS and USPS parcel post.

Swiss Colony is a member of the Direct Marketing Association, which is the largest trade association in the direct marketing field with more than 3,600 member companies from the U.S. and 47 foreign nations. Founded in 1917, its members include direct mailers and direct marketers from every consumer and business-to-business segment, as well as the non-profit sector. Included are catalogers, financial services companies, book and magazine publishers, retail stores, industrial manufacturers, and a host of other vertical segments, as well as the service industries that support them.

I very much appreciate the opportunity to appear before the Small Business Committee to explain my company's objections, which are shared by many other direct marketers, to S. 1825 which would effectively require that mail order companies collect state, county and municipal use taxes in states where we maintain no facilities or employees. The mail order industry's position is frequently misunderstood, and I hope that I can dispel some common myths.

The biggest myth is that direct marketers somehow benefit from an uneven playing field, and I believe that this is the primary concern of Senate Bill 1825's sponsors. If I understand their concern correctly, they are bothered by the fact that in-state retailers must collect a sales tax from their customers, whereas catalog companies do not. The so-called "fairness" concern is whether mail order buyers choose to purchase goods from companies such as ours because they can avoid paying sales tax.

There is no basis in fact for this concern. Almost all direct marketers charge their customers a separate shipping and handling fee over and above the price of the advertised goods. The amount of the charge is usually based on a graduated scale,

with the charge increasing with the size of the order. Industry-wide on average, customers pay approximately an additional 10 percent for shipping and handling costs.

No state has a sales tax rate which is as high as these shipping and handling charges, and most states have a combined state and local rate of somewhere between 4 and 8 percent. It is unrealistic to believe that customers are willing to pay out-of-state mail order companies an additional 10 percent for shipping costs just so they can avoid paying 4 to 8 percent in taxes. There is no economic sense in that kind of buying decision, and there are no studies or surveys of which I am aware that support the claim that consumers buy through the mail to avoid paying sales taxes.

It is important to note that a direct marketer's shipping and handling charge is an up-front disclosure, set forth clearly in the catalog order form. The consumer cannot miss it before placing an order. This is in contrast to the sales tax charge which is not included in a local retailer's advertising. It is only after the customer has committed himself to making the purchase that the sales tax is computed and presented to the customer.

If anything, delivery costs put direct marketers at a serious, and worsening, competitive disadvantage. Postal rates have escalated tremendously in the last 10 years, especially for third-class mail, which is the mainstay of our industry. For example, since 1988 third-class rates have gone up approximately 50 percent. Direct marketers are now girding themselves for another round of rate increases effective early next year. The concern in our industry is whether many small companies can remain in business.

The use tax controversy has been wrongly described as an issue of equity between Main Street merchants and catalog houses. This simply is not the case. In return for collecting state sales taxes, local retailers receive a broad range of state and local government services. These range from police and fire protection, to job training programs for new hires, to state economic development grants and incentives, to maintenance of a public education system for the children of employees. An out-of-state company receives none of these state-funded services.

In contrast, the hundreds of millions of dollars, indeed billions of dollars, which direct marketers pay to the United States Postal Service every year for third-class mail and parcel post is perhaps the single biggest factor in maintaining the health of the public mail system for all Americans. As first class mail is increasingly replaced by E-Mail and other forms of electronic communications, direct marketers have been asked to carry an increasing portion of the total cost of mail delivery. Our industry benefits from the federally run Postal Service, and we pay fully our share of the cost for those services. On the other hand, local merchants benefit from state government services, and they provide a reciprocal service to the states in the form of tax collection. Where is the lack of equity?

Indeed, if equity is the issue, compare the burden of collecting sales taxes on a local merchant with the burden which this bill would impose on out-of-state retailers. For a local retailer, collection of sales taxes is a relatively easy matter. The tax is simply added to the sales price of the product being sold and collected at the register. Sales personnel need consider the rules of only one state. Consequently, there is no confusion over the applicable tax rates, which items are exempt from the tax, or how the tax should be accounted for and remitted to the state treasury.

A catalog company would confront a very different and far more difficult task. First, the tax rates for each of 46 different taxing jurisdictions would have to be explained in the catalog itself. Not only do tax rates differ among the various states, but there are also substantial variations among the states regarding exempt products and exempt transactions. Consequently, in each catalog, we would have to describe all of the variations of rates and exemptions which might be applicable to any particular customer.

Under the proposed legislation, the applicable tax would be determined based upon the destination where the goods are to be sent. This would lead to massive customer confusion. The direct marketing industry tends to be highly seasonal, with a heavy concentration of gift purchases to be sent to relatives and friends. Consequently, a single customer who orders gifts for relatives located in several states would have to determine the applicable tax for each location where gifts are to be sent, and also determine which exemptions apply. Because several different state sales tax rates will apply, our customers would have to compute separately the tax for each item in order to complete the transaction. What previously was a joyous act of gift-giving would now become an exercise similar to filling out an IRS tax return. The success of direct marketing depends upon making the transaction as simple as possible. Once we make mail order complex and confusing for our customers, we discourage their doing business with us.

Let me give an example using our company as a model. Aunt Millie, who lives in Chicago, decides to send the same Christmas gift package, a box containing cheese and sausage and a Santa Claus Christmas plate, to each of her two nephews, one in Indianapolis and the other in Cleveland. In Indiana, food is exempt, but Indiana takes the position that the item is a gift and as such is fully taxable, even if it's a sack of flour. In any Ohio, food is also exempt, but if over one-half of the value the package is other than food, then the whole package is taxed. If one-half or more is food, then the whole package is exempt. The tax rates differ in each one of those states. Aunt Millie is confronted with a daunting task. After a quick look at the order form, she probably decides not to buy from our company; maybe this year Christmas cards alone will be sufficient.

Another serious problem which would confront direct marketers is actually collecting the sales tax from customers. In contrast to a local retailer who collects the tax at the cash register before the customer leaves the store, we would have to rely upon our customers voluntarily including the tax with their payment. If the customer does not voluntarily pay the tax, we are confronted with a real dilemma. We can decline the entire order, which would probably not only result in losing that particular sale, but losing the customer altogether. Alternatively, we can fulfill the order, and send a separate supplementary bill for the amount of tax due. Many customers are not likely to respond to such a request, and we would have to rebill them. The cost of the collecting the unpaid taxes would be considerable.

For example, last year, our average customer transaction was only \$70. Assuming a 6 percent sales tax on that transaction, we would be chasing after \$4.20. The expense of sending follow-up demand letters to customers would, in most instances, exceed the amount of the tax we are attempting to collect—not to mention the annoyance our customers would feel when being dunned with successive letters. If we did not pursue the tax, we would be directly liable ourselves for the entire amount of the tax due from the customer. In fact, many states prohibit a retailer from absorbing the sales tax. These are real problems, not abstract concerns. They represent substantial administrative costs and will have an adverse impact on customer relations. Moreover, these are problems which are not experienced by local retailers. This can hardly be considered a level playing field. Those large catalogers which now collect in many states have only a very few check paying customers.

Proponents of the legislation might argue that I overstate the problem, because if a customer orders by telephone and uses a credit card, the tax will be added on automatically by the telephone operator, so there is no occasion for customer confusion or underpayment. This is another myth, however. Most direct marketers have a large number of customers who pay by check; for example, our company receives 20 percent of its revenue by check. The industry average is about 35 percent, and for some companies checks are the method of payment for 70 or even 100 percent of their sales. Those customers must make all of the tax computations and remittances by hand. No retailer can ignore or abuse such a large proportion of its market.

Another myth is that the states are incapable of collecting the sales tax directly from their own residents. The fact is that several states have mandatory reporting of out-of-state purchases on state income tax returns. The use tax is then collected the state income tax. Most state revenue from departments, however, have not implemented this simple mechanism for increasing use tax revenues. Moreover, the states which have provided for use tax reporting on their state income tax returns have not educated the public about this fact, nor have they explained the manner in which the tax is collected.

The State of Maine, however, has come up with a creative solution. The Maine income tax return also has a section for reporting out-of-state purchases on which a use tax must be paid. In addition, however, Maine has a so-called "default mechanism." If the taxpayer does not voluntarily disclose the amount of out-of-state purchases, then an automatic default calculation of the use tax is made, which is equal to 0.0366 percent of the adjusted gross income reported by the taxpayer. In other words, if a taxpayer has an adjusted gross income of \$30,000, the "default mechanism" automatically adds \$11 to the Maine resident's tax obligation. To avoid the "default mechanism," the taxpayer must report the actual amount of his out-of-state purchases. Of course, a taxpayer could lie and make a false disclosure to avoid the "default mechanism." Out-of-state purchases, however, are easy to audit. A state revenue department auditor merely needs to examine a taxpayer's checkbook register and monthly credit card statements. My point is a simple one; Congress should ask the states to explore efficient self-help measures, such as the Maine model, before imposing unfair burdens on direct marketers.

State revenue departments have done almost nothing to come up with a more reasonable solution to the problem they claim exists. I would like to give you an impor-

tant example of this. For over 2 years, our trade association, the Direct Marketing Association, engaged in negotiations with the Multistate Tax Commission and the Federation of Tax Administrators to reach an agreement which would provide for voluntary collection of use taxes by many mail order companies. Both sides worked extremely hard in these negotiations, and their respective negotiating teams finally reached agreement for such a plan in December 1992. The assumption underlying these negotiations was that if the confusing and wildly differing state sales and use tax laws could be made simpler and more uniform for direct marketers, use many mail order companies would voluntarily collect the use taxes in order to be freed from the continuing risk of inadvertently engaging in business activities which might bring them within a state's tax jurisdiction. The resulting agreement, which was entitled the Interstate Agreement on Voluntary Multistate Compliance for Collection of Sales and Use Taxes, provided for simplified rate structures, uniform definitions for exempt products and exempt transactions, standardized administrative procedures, and protection from liability for uncollected taxes where a good faith effort at collection had been made, as well as a number of other features.

The draft agreement was a paradigm of industry and government leaders attempting to achieve a voluntary solution to a complex controversy. Moreover, the engine for this solution was a set of incentives and compromises by both sides to achieve a voluntary compliance program. Now remember, the negotiating teams for both sides reached agreement on a specific and comprehensive written agreement. However, when the tax administrators went back to their respective associations to ratify the agreement, the executive committees of the Multistate Tax Commission and the Federation of Tax Administrators rejected the draft document in its entirety and did not even instruct their negotiators to return to the bargaining table.

In the end, the tax administrators wanted to have the best, or perhaps the worst, of both worlds. They insisted on jealously guarding their right to maintain totally independent, non-uniform, uncoordinated state tax systems, while nonetheless insisting on the right to cast their tax nets over companies located far beyond their borders.

The "in lieu" provision in the proposed legislation does not begin to address the problem of non-uniformity among the various states. Direct marketers would still be confronted with 46 different rates, different exemptions, different reporting procedures, multiple audits, and a myriad of other compliance requirements. Even within a single state, however, the "in lieu" rate creates problems. Because it is a blended rate, averaging the local tax rates in effect throughout the whole state, many customers paying the "in lieu" rate would be paying at a was different rate than the one which they understand to be their local tax obligation. Some customers would pay a higher rate, and some customers would pay a lower rate than the level with which they are familiar. Accordingly, many customers would be paying a rate which they believe to be incorrect. Again, this increases customer confusion and gives the impression that, as retailers, we are imposing an improper charge.

In conclusion, I want to stress the importance of the two economic conditions which are critical to the success of the direct marketing industry. The first condition is the necessity for ease and clarity in transactions with our customers. If the Federal Government forces us to present customers with a confusing array of tax schedules and computations in our catalogs, we will lose many customers because of the perceived complexity of the transaction. Indeed, this legislation would become the Sales Suppression Act of 1994.

The second critical economic condition upon which our industry has relied is the free trade zone which the Constitution's Commerce Clause created among the states. Indeed, the reason for the Constitutional Convention in Philadelphia was to remove the burdens which state legislatures had imposed upon the free movement of goods among the former colonies following the Revolutionary War. The Commerce Clause created one large American marketplace, and 200 years of economic growth has proven the success of that idea. It is ironic that at a time when Europe has eliminated trading borders among the Common Market countries and is moving toward standardization of tax practices, our own states are now petitioning Congress for a license to export their totally diverse tax laws across state boundaries. To grant this request will only result in consumer confusion and damage to an industry which has served the American public well and created jobs for millions of Americans.

The CHAIRMAN. Thank you, Mr. Regez. Mr. Edmund.

**STATEMENT OF ROBERT EDMUND, PRESIDENT, EDMUND
SCIENTIFIC COMPANY, BARRINGTON, NJ**

Mr. EDMUND. My name is Robert Edmund. I am president of Edmund Scientific, a \$23 million, 160 employee catalog supply house founded by my father in 1942. We provide optics, optical equipment, and scientific equipment primarily to industry and education, mostly universities but also to scientific types at home.

I would like you to think of me as a pack mule, already burdened down with OSHA requirements, employee reporting requirements, environmental reports, and high postage rates driven excessively high by Congress-forced subsidies for nonprofit postage and preprivatization pensions. Now, as you are about to load on us a 10.3 percent postage increase and probably some more health care burdens, you would like to throw one more thing on top, and then you want to tell the mule, which is me, who has to carry it that it really is not any burden as the tax agents were saying earlier.

I am here to tell you that it is a burden, and I would like to explain why. Also, I would like to point out to you that it is hard for you all to expect high-tech companies like us to run competitively in a world marketplace when you burden us with this type of bureaucracy.

First, I would like to dispel the apparent misconception that it is a catalog versus Main Street merchants bill. This bill is much more encompassing, and it will cover all businesses doing over \$3 million and selling in interstate commerce. Many of the very home town businesses that we have been talking about today are going to become tax collectors for the various States. I would suggest that is why the NFIB so soundly rejected this concept, because a lot of them would be covered by it.

Let us take the mythical \$3 million Acme Bucket Manufacturing firm selling their products mostly to hardware stores, exempt because it is for resale. However, if you direct customers such as Holiday Inns and Ramadas who buy their mops and buckets for shipment to the various locations in many different States, Acme does not think of itself as a catalog firm, or even as a direct marketer. But they, too, will be liable to collect the tax in each of the States to whom they ship the buckets. Likewise, because they are now covered by the bill, they will be forced to keep exemption certificates for all of the resale accounts that they maintain in the various States.

Basically, anyone dealing in interstate commerce over \$3 million in total sales, not in interstate commerce sales but in total sales of their business, will now have to keep extensive records just to prove why they did not collect, and that is saying all their customers are exempt, and today it is very hard to be totally exempt. I will give you an example—we talked about school supplies earlier.

Every one is saying that, school supplies are exempt in all the States. But this is not the case. In California and Louisiana school supplies are taxable, with an exception that if the program is federally funded then there is not an applicable tax. So even people selling school supplies across State lines are going to find that they are covered by this if they deal with California and Louisiana.

Specifically, the burden for Edmund Scientific: In our home State of New Jersey we must technically maintain exemption certificates for each and every transaction that qualifies. Annually, this is a 4-foot-long file cabinet for New Jersey only. We will be obliged to keep 45 more cabinets, I presume, and how many more people to maintain those exemption certificates to prove that the sales were exempt.

These tax agents who we saw today, they look like nice enough people, but as they might know they typically have a little Jekyll and Hyde in them. And in a New Jersey audit, an order from a New Jersey firm to us for 200 lenses and one microscope was cited, probably correctly so. The agent noted that despite the purchase order indicating that it was all exempt, the microscope was equipment and tax was due on it. Edmund Scientific was assessed to pay it. We were told it was our problem to collect it from the customer, even though many years had now passed since the original transaction occurred. That is one example. In the audit, many of these were brought up where the agent disagreed with us as to what was or was not taxable.

So yes, I truly believe that it will be an unfair burden on us of paperwork, compliance costs, and audit settlement nightmares. We looked at many different examples of other mail order companies. Many people said it is going to be easy. But if you take all the plain vanilla cases, of course it is going to be easy. There are many of us out there like myself who are not plain vanilla, who are complex modern businesses.

In the old House Brooks bill in the North Dakota case, and now in the Bumpers bill, it is the State tax agents who are really pushing the idea. Of course, like Tom Sawyer, they want someone else to do all the hard work for them. The Maine collection idea could work nationally. Already it is fairly successful and it is only in its first year. I suspect that their collection rate will improve as the public in Maine come to understand it. And that would put the burden in the proper place. We might note the Maine bill also requires and covers the problem we talked about with the furniture in that under penalty of perjury Maine residents must report all mail order purchases over \$500.

Also, we should point out that in all of these estimates people are not considering—we talked about selling a computer to another business. If you do that across a State line, the business that bought the computer, if it is taxable in their State, has to report that on their use tax form and pay it. When we buy equipment from out of State, Edmund Scientific may not pay tax to the seller, but we certainly have to pay our use tax on that item to the State of New Jersey.

Finally, mail order, or more correctly interstate direct selling, has not grown because of avoiding sales taxes. It has grown because it is convenient in today's world where husbands and wives work and have little time for shopping; it has grown because businesses need specialized products that are centrally located and can only be accessed through the interstate commerce process. It is said we do not provide jobs. When I provide the latest high-tech equipment to local firms we help create jobs because we help those local businesses succeed. And listening to the tax agents, I would

simply suggest to the Committee that you ought to get an economist in here to explain the effect of these tax dollars.

If, as they all claim, those dollars were out there running loose in the hands of consumers and in the economy right now, if you take them out of that economy some effect has to happen to the base of the economy. It has got to go down. I know they are anxious to have the funds, but they had better understand the total economic picture.

Thank you very much.

[The prepared statement of Mr. Edmund follows:]

PREPARED STATEMENT OF ROBERT EDMUND, DIRECT MARKETING ASSOCIATION

My name is Robert Edmund. I am president of Edmund Scientific Company, which is a mail order catalog distributor of optics, optical instruments and science supplies, located in Southern New Jersey. Our annual sales are \$23 million and we employ 160 people. Founded in 1942, approximately three-quarters of our revenues are derived from sales of products to industrial research firms, manufacturers, and educational institutions with the remaining quarter to individuals. Significantly, we are similar to a great many direct marketing firms who are not competing with main street merchants. We are in this business because it is the only economically feasible way to distribute these types of goods.

We solicit our business primarily through catalogs and magazines. Our products are delivered through private common carriers such as UPS and Federal Express, as well as USPS parcel post. Most importantly, we are typical of thousands of companies, particularly in niche markets, that would be severely burdened by the tax collecting and record keeping responsibilities which S. 1825 would permit states to impose upon national direct marketers.

Edmund Scientific is a member of the Direct Marketing Association which is the largest trade association in the direct marketing field with more than 3,600 member companies from the U.S. and 47 foreign nations. Founded in 1917, its members include direct mailers and direct marketers from every consumer and business-to-business segment, as well as the non-profit sector. Included are catalogers, financial services companies, book and magazine publishers, retail stores, industrial manufacturers, and a host of other vertical segments, as well as the service industries that support them.

Proponents of S. 1825 often claim that this legislation would "level the playing field" for main street merchants and direct marketers. There is a common misconception that direct marketers possess an unfair pricing advantage since they do not collect sales taxes for items bought by customers residing in states where the marketers do not have a physical presence or "nexus."

The fact is, direct marketers are actually at a disadvantage since they must add shipping and handling charges to the goods they sell. Industry-wide on average, customers pay an additional 10 percent for shipping and handling costs. This figure usually exceeds sales tax which on a combined state and local rate run roughly 4 to 8 percent throughout the Nation. Where then is the advantage for direct marketers?

Not only are delivery costs putting direct marketers at a competitive disadvantage, but the situation is unfortunately getting worse for the mail order industry because of the dramatic increase in postage costs. Third-class mail, the means by which catalogs and other direct mail pieces are delivered, has experienced significant increases in recent years.

On the issue of "fairness," we must ask if it is fair for states to impose significant tax collection burdens on businesses which receive no benefits in the form of services. States provide considerable benefits to local retailers in the form of police and fire protection, sanitation services, job training, and other municipal support.

Mail order companies with property or even a single employee in a state currently collect that state's use tax in return for state services. This legislation would force mail order companies with no presence in a state to absorb the cost of collecting the state use tax in return for no services. In addition, without employees or property in a state, a company is without a political voice to affect the state and local tax laws.

The administrative compliance costs which S. 1825 would impose on direct marketers are substantial, particularly for the small to mid-sized company. Edmund Scientific, as a relatively small company, does not have the legal or accounting infra-

structure of a Fortune 500 company to absorb the administrative burdens of this legislation.

Tax collecting responsibility for a national marketer poses a sharp contrast to that of a main street retailer. The main street retailer deals with only one rate to collect and the rules of only one state. Further, there is no uncertainty over applicable tax rates, which items are exempt from tax, or how the tax should be accounted for or remitted to the state treasury.

If this bill were to become law, thousands of mail order companies would be forced to collect taxes according to over 6,000 different rates and 46 different sets of exemptions and filing procedures. (Forty-five states and the District of Columbia collect sales tax.) Worse still, these rates are always in flux, particularly with school districts, transit districts, sewer districts, etc., frequently exercising an option to add on a local tax. Not only are tax rates constantly changing, but there are substantial variations among the states regarding exempt products and exempt transactions.

Passage of S. 1825 would require the use of expensive catalog space to present a chart of the Nation's different tax rates. I also have some doubts, based on our experience in our home state of New Jersey, that customers would send in the correct amount of tax. When New Jersey customers fail to include sales tax in their remittance, we usually make up the difference at our expense, simply because it is often too expensive to pursue the small individual amounts due us. Clearly, this loss burden will increase dramatically if we are obligated to collect for every state. The states will certainly hold us responsible for 100 percent of the applicable tax, when in reality we will collect less and suffer the shortfall.

Most of the debate on this legislation has centered on the tax collecting responsibilities of mail order houses on behalf of their household consumers—individuals. This is only part of the problem. One of the most difficult aspects of the bill's compliance requirements concerns non-consumer sales. Included among these sales are items sold to educational institutions, which are usually tax-exempt, or to manufacturers for re-sale as part of a larger product (products sold for resale are exempt from sales tax), as well as sales that would be taxable.

As I noted, the exemption status varies by state. For example, in California schools are not exempt from sales tax unless the program is federally funded. Research and development projects are exempt in some states, but not in others. This legislation would place an onerous burden of paperwork and complexity on Edmund Scientific, as well as all national direct marketers.

As a New Jersey-based corporation with nexus only in that state, we must maintain a hard copy file of tax-exempt certificates for all qualifying New Jersey transactions. This responsibility consumes one-half of a full-time employee's time at work. Additionally, these certificates take up a four-foot-long filing cabinet—just for New Jersey. If this bill becomes law, we would face the same challenge for 45 other states.

The administrative burdens created by this legislation cannot be met by simply buying additional computer software. The kind of time-consuming compliance process I have described, multiplied by 46 states, will impose significant and burdensome costs on mail order companies, and small and mid-sized companies will be particularly hard hit. Overall, S. 1825 would require every manufacturer or supplier who sells out-of-state to organize to collect tax in every state.

The revenue estimates put forward by the advocates of this legislation are based on a poorly researched study by the Advisory Commission on Intergovernmental Relations (ACIR), and not surprisingly, are vastly overstated. In 1993, the Direct Marketing Association retained Nathan Associates, a well-known and respected economic consulting firm in the Washington area, to perform an update of its 1986 uncollected tax analysis using the figures and assumptions of the ACIR study. The Nathan study concluded that the amount of uncollected sales tax on interstate mail order sales in 1991 (the sample year) was \$1.38 billion. This figure is in significant contrast to the ACIR figure for 1991 of \$3.08 billion. (See attached copy of the Nathan Study.)

Obviously, these estimates are far apart: the ACIR figure for potential revenue to be gained by the states is over twice the figure of the Nathan study. The ACIR figures failed to adjust for tax-exempt products, as well as taxes already being collected by direct marketers with a physical presence in a state.

Here is a summary of some of the Nathan study's findings:

1. Total potential additional state and local tax revenues in the sample year of 1991 were \$1.38 billion, which is less than half of the ACIR estimate.
2. The \$1.38 billion figure compares to total state and local revenues of \$732.1 billion or 0.19 percent. Including federal grants would raise state/local revenues to \$882.5 billion and reduce the mail order use tax potential to only 0.16 percent.

3. Even the figures in the Nathan study are high. They are based on the assumption that every penny of uncollected tax could be collected at no cost to the state governments and with no adverse revenue impact on other revenue sources. In actual fact, states would realize only a fraction of the revenue identified, because passage of this legislation would result in collateral costs which would reduce other sources of state and federal revenues.

For example, mail order firms would face reduced sales and added administrative costs resulting in lower profits and employment. This would translate into lower state and federal income and payroll tax revenues.

Rather than foisting this inefficient method of tax collection on the Nation's direct marketers, the states themselves have options to collect the tax directly from their own residents. In particular, the collection of tax on out-of-state purchases can be made via the state's income tax form. Currently, 10 states collect use tax directly from consumers through the state's income tax form. However, of these 10 states, only the state of Maine has an effective method for collecting mail order use taxes. The Maine statute, which took effect in 1991, led to the collection of \$1.7 million or 23 percent of an estimated \$7.3 million of use tax owed.

While a number of states have a line on their income tax forms for payment of use tax on out-of-state purchases, only Maine has a "default provision." If a Maine taxpayer leaves the line blank or fails to sign the form (under penalty of perjury), then the state automatically adds an amount equal to the average tax owed on out-of-state purchases, calculated at 0.0366 percent of the taxpayer's taxable income. For example, if a taxpayer had \$30,000 of taxable income, the tax would be \$11.00. The Maine statute requires listing any mail order purchase which exceeds \$500. Maine's collection level of 23 percent is significant since 1991 was the first year of implementation of the new statute and the state employed no added enforcement effort to increase compliance with the new provision.

In concluding my testimony, I would like to focus on several key points. First, why has non-store marketing flourished in the last 30 years? The computer, credit cards, and most importantly, convenience have been the driving forces. Our modern society, in which both spouses often work, finds mail order a convenient way to shop on a hectic and limited time schedule. Rapidly developing technologies create demands for the vast array of diverse products most easily distributed by centralized suppliers with expertise in rapid order processing and fulfillment. To claim that the tax issue has created this growth is simply naive and unrealistic. Progress has created this rapid growth, and now we must seriously question the wisdom of trying to burden or restrain this healthy expansion of commerce.

If the mission of the Small Business Committee is to encourage entrepreneurship, if it is the intent of this committee to foster the growth of small and mid-sized companies, then I simply do not understand the position of the proponents of S. 1825. Placing undue burdens on one group of businesses is not the way to help another group.

The stated goal of supporters of this bill is to "level the playing field." Let us analyze this from an historical perspective. We are dealing with an issue whose origin dates back to the earliest days of our republic. During the period of the Articles of Confederation, as various states sought to protect their own merchants, interstate commerce became a nightmare. The Constitution sought to eliminate these impediments and to assure and encourage the free flow of goods and services.

Mr. Chairman, members of the committee, the Constitution properly vests the power to regulate interstate commerce with the Congress. The purpose of the Commerce Clause of the U.S. Constitution is to avoid the disasters of the Articles of Confederation by making Congress the guardian of the national marketplace. It is clear that the Constitution presents no legal impediment to Congress acting in this area, but it is equally clear that the Constitution contains a policy perspective that cautions against placing burdens on national commerce for the benefit of states and their local merchants.

The Impact of Taxing Interstate Mail Order Sales on State/Local Government Revenue

SUBMITTED TO THE
Direct Marketing Association

SUBMITTED BY
Nathan Associates Inc.
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1. Introduction

BACKGROUND

It has long been debated whether out-of-state mail order companies should be required to collect state use taxes. In 1967 the U.S. Supreme Court decided in *National Bellas Hess, Inc. v. Department of Revenue* that a mail order retailer could not be required to collect a state's use tax unless the seller had a physical presence in the state levying the tax, since the requirement would otherwise place an unfair and undue burden on interstate commerce. The *Quill Corp. v. North Dakota* decision in 1992 essentially upheld the 1967 ruling.

An ancillary part of this debate has been the question of what dollar amount of revenue would in fact be collected by state and local governments if out-of-state mail order firms were compelled to collect use taxes. Since the mid-1980s, the Advisory Commission on Intergovernmental Relations (ACIR) has periodically made estimates of the potential revenue gains. A preliminary version of ACIR's first study on the topic found that potential use tax revenue was as high as \$1.5 billion in 1985. The Direct Marketing Association (DMA) found several deficiencies in the methodology used to estimate this figure, including a failure to fully measure tax revenue that was already being collected by mail order firms with a physical presence in states besides their home states. DMA retained Nathan Associates in 1986 to conduct a more comprehensive and independent revenue analysis. Nathan Associates estimated that the 1984 state/local use tax revenue potential from interstate mail order sales was about \$700 million.¹

The latest ACIR study on this subject² provides a number of estimates of the revenue potential, but DMA continues to find inadequacies in ACIR's methodologies, including the one previously mentioned, and has again retained Nathan Associates to examine the revenue impact issue and to develop up-to-date revenue potential estimates.

¹See Nathan Associates, *An Economic Study of the Likely Impact of Overturning the Bellas Hess Decision on State Tax Revenues*, April 8, 1986.

²See Advisory Commission on Intergovernmental Relations, *State Taxation of Interstate Mail Order Sales: Estimates of Revenue Potential, 1990-1992* (M-179).

METHODOLOGY SUMMARY

Put simply, the estimation of potential revenues from taxing interstate mail order sales is a two step process. First, a tax base is derived by subtracting from nationwide mail order sales the sales volume of product and services that are tax exempt or on which taxes are already being collected. Second, tax rates are applied to the tax base to estimate the revenue potential. More specifically, the following procedure was used to make the estimate.

Nationwide Mail Order Sales The starting point in evaluating the use tax revenue potential from interstate mail order sales is a reasonable estimate of nationwide mail order sales. Both the latest ACIR study and this study use the estimate provided in the annual *Guide to Mail Order Sales*, which is authored by Arnold Fishman, President of Marketing Logistics, Inc.³ The *Guide* provides the most comprehensive and defensible estimate and data available, including mail order sales estimates for over 30 product and service segments.

Nationwide Adjustments Using Mr. Fishman's estimate of nationwide mail order sales as the initial base, Nathan Associates made several downward adjustments. The first subtraction was the mail order sales of product and service segments that are nationally tax exempt or on which taxes are already being collected nationwide.

De Minimis Provision In addition, the sales of mail order businesses with annual revenues of less than \$10 million were subtracted from the nationwide mail order sales estimate. This subtraction was made since small mail order firms would probably be excluded from any federal legislation permitting the taxation of interstate mail order sales. Small mail order firms would likely be excluded since they would face proportionately high compliance costs in tracking rates and exemptions for the states and for thousands of local tax jurisdictions. The \$10 million *de minimis* level is a more conservative threshold than the \$12.5 million threshold we used in our original study in 1986. In its 1985 recommendations to Congress on legislation to overturn *National Bellas Hess*, ACIR recommended a *de minimis* level of at least \$12.5 million, and the Small Business Administration considers a mail order firm to be "small" if it has annual sales of \$12.5 million or less.

State-specific Adjustments For this part of the analysis, it was assumed the sales volume in the base was distributed across the states in the same manner as disposable personal income. Nathan Associates removed from the base the mail order sales in states without a sales tax on the state or local level. The sales base was then adjusted to account for the states where firms were already

³Mr. Fishman was retained by DMA to provide technical assistance to Nathan Associates in conducting this study. ACIR did not, however, consult with Mr. Fishman about usage of the data.

collecting use taxes. This adjustment was based on tax collection information compiled on individual businesses covering about 75 percent of the sales volume remaining in the base. The base was also reduced to reflect three products that are sometimes or are frequently tax exempt: apparel, food, and magazines.

Tax Base and Rates After all adjustments, we estimate the mail order sales volume that could potentially generate increases in state and local use tax revenues by requiring out-of-state mail order firms to collect use taxes to be \$22,061 million. State and local tax rates were applied to this mail order sales volume to estimate the mail order use tax revenue potential in total and by state. The average state/local use tax rate was determined to be 6.265 percent.

FINDINGS SUMMARY

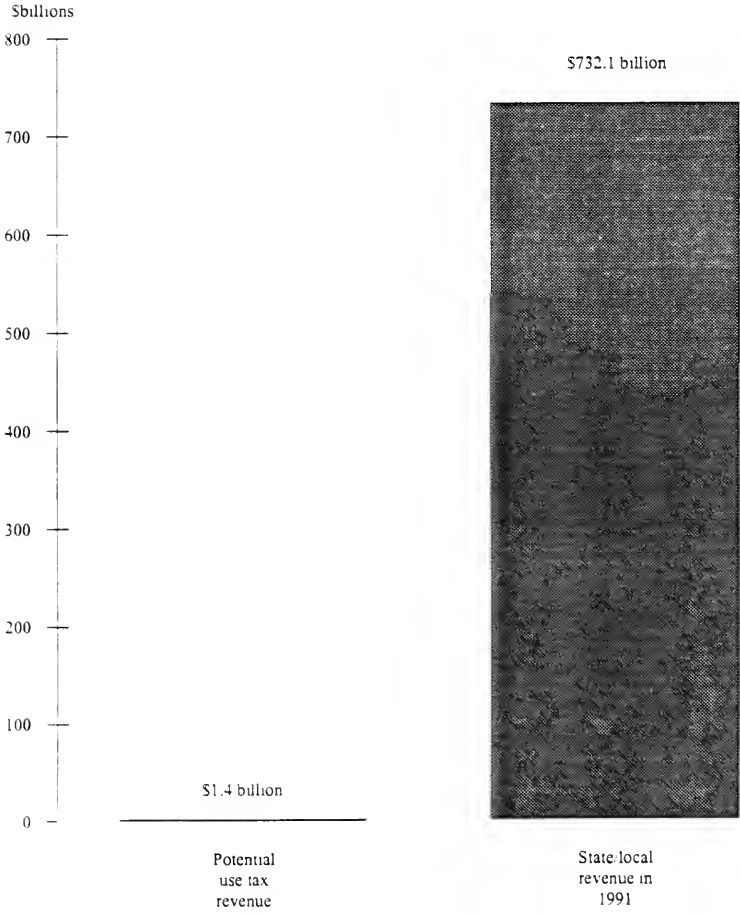
Nathan Associates estimates that only \$1,382 million in additional state and local government tax revenue could have been generated nationwide in 1991 if state governments had been permitted to require out-of-state mail order firms to collect use taxes. The revenue potential is only 0.19 percent of existing state and local revenue, excluding any federal grants and the revenues of states without a use tax on the state or local level. Figure 1 shows the potential use tax revenue would be a trivial component of state and local government revenues.

Thirty-seven percent of the potential nationwide revenue gain is accounted for by just five states: California, New York, Texas, Illinois, and Florida. Each of these states would potentially gain more than \$70 million. Twenty-three states would each gain \$16-65 million. The remaining states with a state or local use tax, including eighteen states and the District of Columbia, would account for only 11 percent of the potential nationwide gain and would each add less than \$16 million to their state and local government revenues.

The estimate of the potential gain in use tax revenue is actually overstated to the extent that we were unable to quantify several reductions in the taxable mail order sales volume. For example, we could not measure the mail order sales to nonprofit and government entities that are tax exempt in many states. We also could not measure the sales on which business purchasers already pay use taxes to state and local government. In addition, we did not evaluate the adverse impact the taxation of interstate mail order sales would likely have on mail order sales and employment. The revenue potential would also be reduced by the costs of administering and enforcing the tax law and from some inadvertent noncompliance.

In addition, the revenue estimates have not been reduced to reflect that portion of the outstanding mail order use tax that was collected by the states directly from the consumers. According to the Direct

Figure 1. Potential Use Tax Revenue Compared to State and Local Government Revenue in 1991



Note: The \$732.1 billion in state and local government revenue in 1991 excludes federal grants and the revenue of states without a use tax on the state or local level. Including federal grants would make state local revenue \$882.5 billion and make the mail order use tax potential even more inconsequential in comparison.

Marketing Association, ten states collect use taxes directly from customers via the state's income tax form. However, of the ten states, only Maine has a truly effective method for compliance. The Maine collection method is described in detail on page 25.

REPORT ORGANIZATION

The remaining chapters in the report explain our study methodology and results. Chapter 2 contains a description of how Arnold Fishman derives his nationwide estimate of mail order sales and discusses how the estimate and other data provided by Mr. Fishman are appropriate for estimating the potential revenue from taxing interstate mail order sales. Chapter 3 explains the methodology for deriving our estimate of the mail order use tax revenue potential. A more detailed description of our findings by state and some concluding remarks are provided in Chapter 4. To indicate the level of detail that Mr. Fishman conducts research to calculate his nationwide sales estimate, Appendix A contains a complete listing of the product and service segments and subsegments he uses.

2. Nationwide Mail Order Sales

A comprehensive and defensible estimation of nationwide mail order sales is an essential starting point in deriving potential gains from the levy of a use tax on interstate mail order studies. Consistent with the ACIR report (M-179), our study uses the estimates of mail order sales derived by Arnold L. Fishman in his *Guide to Mail Order Sales*. The first part of the chapter explains the compilation methodology employed by Mr. Fishman. The second part addresses issues pertaining to the appropriateness of his data for this study.

THE ESTIMATION PROCEDURE

This study relies on the 1991 edition of the *Guide to Mail Order Sales*, which is authored by Arnold L. Fishman and published by Marketing Logistics, Inc. Compiled annually since 1981, the *Guide* is the most detailed source of information pertaining to sales generated via the mail order mode of retail distribution, with information available on hundreds of firms spanning over 30 product and service segments. This level of detail affords a rigorous examination of the mail order sales likely to be affected by any federal legislation that would permit state governments to require mail order firms without any presence in their state to collect their sales tax. The methodology developed and applied by Mr. Fishman to generate the mail order sales estimates can be thought of in terms of three distinct steps—market structure, data collection, and data aggregation.

Market Structure

The first requirement in an aggregation methodology for estimating the total sales volume of goods and services distributed by mail order involves defining a market structure of the divisions, segments, and subsegments constituting the mail order marketplace. Mail order is not an industry, but rather a mode of retail distribution that spans many industries. Fishman classifies mail order firms as either of two types of marketers—specialty and general merchandise. Within the specialty marketers group, segments are defined according to the primary type of product sold, such as sporting goods, apparel, and collectibles. For firms classified as general merchandise marketers, segments are defined along primary outlet lines (e.g., catalog retailers, catalog showrooms, or department stores).

Fishman has identified over 30 product and service segments, representing either specialty or general merchandise mail order categories, that contain a nontrivial mail order sales component. Within these market segments, over 300 subsegments isolate various components of the broad market segments. For example, the book market segment includes subsegments for book clubs, mail order publications, general books, and reference books. Appendix A contains a complete listing of the product and service segments and subsegments as currently defined by Fishman.

Data Collection

The second step in Fishman's mail order sales methodology involves two tasks: (1) identifying mail order businesses and classifying them to a unique subsegment of the overall mail order segment structure, and (2) determining the mail order sales of the identified mail order businesses. The latter step is complicated to a large degree by the private ownership of many mail order businesses and the corresponding lack of public reporting of sales data. Also, sales of mail order firms that are owned by large publicly-held conglomerates are sometimes combined with sales data from other corporate divisions in published reports. As a result, it is necessary to consult and carefully scrutinize all available sources of information on both private and public mail order businesses. Sources that Fishman relies on to identify mail order firms and their sales include the following.

- *Directory of Members*, Direct Marketing Association.
- *Direct Marketing Marketplace*, National Register Publishing Company.
- *Directory of Mail Order Catalogs*, Grey House Publishing, Inc.
- *Directory of Industrial Catalogs*, Grey House Publishing, Inc.
- Credit reports from Dun & Bradstreet, Inc.
- Dun's Market Identifiers for SIC Code 5961 (Mail Order), Dun & Bradstreet, Inc.
- *Directory of Corporate Affiliations*, National Register Publishing Company.
 - U.S. Public Companies (Volumes 1 and 2).
 - U.S. Private Companies (Volume 3).
 - International Public and Private Companies (Volume 4).
- Annual reports of publicly-held companies.
- *Standard Directory of Advertisers*, National Register Publishing Company.
- *Standard Rate & Data Service—Direct Mail List Rate and Data*, Standard Rate & Data Service.
- *Value Line Investment Survey*, Value Line Publishing, Inc.
- Fifteen years of newspaper and trade publication clippings from various periodicals.

Data Aggregation

The final step in Fishman's sales compilation methodology is the aggregation of sales in each of the identified segments. Four distinct aggregation approaches are used, depending on the breadth of information available on the companies making up the segment.

- Micro estimation
- Macro estimation
- Mixed micro and macro estimation
- Special macro estimation for generalized industrial mail order marketers

Micro Estimation

Mail order sales are micro estimated for segments where most if not all of the market participants have been identified and their sales volumes have been obtained or estimated. When identified businesses do not provide sales data, estimates are made using Dun's Identifiers service. The sales estimate for each micro-estimated segment is made by summing the sales of the identified businesses in the segment. No allowance is made for any residual unidentified businesses.

Macro Estimation

When segments are characterized by insufficient sales information on all its mail order businesses, mail order sales are macro estimated. Difficulties may arise either with regard to identifying all the participating firms or in isolating the mail order share of total retail sales on a firm-by-firm basis. Under these circumstances, it is necessary to rely on a single segment-wide mail order sales estimate either provided by or extrapolated from an authoritative industry source, such as a trade association. Many of the large mail order segments are estimated in this manner, including newspapers and magazines. The complete list of macro-estimated segments and their sales sources is presented in Table 1. Even in segments where macro estimates are made, Fishman nevertheless compiles sales information on as many mail order firms as possible.

Mixed Micro/Macro Estimation

Some segments exhibit a high degree of sales concentration in a few easily identifiable firms. In such cases, a mixed micro and macro approach is appropriate. The sales of the larger firms are aggregated as in the micro approach. Using information available on the market shares of these firms, a macro

Table 1. Information Sources for Estimating Mail Order Sales for Macro-Estimated Segments

Segment	Source
Books	Association of Publishers, <i>Estimated Book Publishing Industry Sales</i>
Magazines	Magazine Publishers Association, estimates of subscription volume and average subscription dollar size
Newspapers	Newspaper Advertising Bureau
Records	Records Advertising Association Research Committee
Computer software and hardware	Various computer industry consulting, research, and publishing sources
Department specialty stores	Annual reports for department store chains, and <i>Stores</i> magazine (National Retail Federation) for specialty stores
Catalog showrooms	Trade publications
Cable TV	National Cable TV Association, <i>Cable TV Developments-Satellite Services Report</i>
Cultural events	Trade source on cultural event revenues
900 number services	Telemarketing trade publication
Service contracts	Industry source
Home study	Industry source on home study revenues
Photofinishing services	Photo Marketing Association International
Sports events	U.S. Department of Commerce, <i>Statistical Abstract of the United States</i>
Prepaid legal	<i>The Nilson Report</i>
Discount brokerage services	Newspaper sources on overall brokerage commissions and discount brokerage share
No load mutual funds	No Load Mutual Funds Association
Financial newsletters	Newsletter Association
Mailing list services	Industry sources
Trade subscriptions	Industry source on trade publication subscriptions

Source: Marketing Logistics, Inc.

estimate is made for the remaining firms in the industry. The sum of the micro aggregation and the macro estimate form the estimate of the overall segment's sales. Segments where mixed micro-macro estimation is used include educational services, industrial supplies, business information, business communication, and air freight.

Special Macro Procedure

Mail order is a mode of distribution that spans many industries. Fishman has identified many industries with firms that either specialize in mail order distribution or garner a large volume of their total sales via mail order. In addition to these firms, there are literally thousands of other firms, primarily in the industrial sector, that use mail order as one small part of a multi-dimensional distribution network for their retail operations. Fishman has devised a special macro estimation technique to capture this component of mail order sales.

APPROPRIATENESS OF THE FISHMAN DATA FOR THIS STUDY

Both the Nathan Associates study and the ACIR study use the mail order sales data from Fishman's *Guide to Mail Order Sales*. The *Guide* is used instead of data from the *Census of Retail Trade*, because the Fishman data is more specific, current, and inclusive. The Fishman data has information on individual companies while the *Census* does not show individual business data, and the *Guide* is updated annually, while the *Census of Retail Trade* is conducted only every 5 years. The *Census* data is limited to only those firms whose primary standard industry classification is 5961 (catalog and mail order houses), while Fishman's *Guide* has information on the mail order sales of firms regardless of their primary standard industrial classification. This greater coverage results provides the Fishman data with a larger sales basis than the *Census* data: the *Census* estimate of mail order product sales for 1987 was \$20,347 million, only 47 percent of the *Guide's* estimate for 1987 consumer mail order product sales of \$43,380 million. Thus, the Fishman data provide a much more comprehensive basis for a study of this nature.

As stated in the introduction to the *Guide*, there are some other measures of mail orders sales. These other estimates, however, tend to focus on a single industry-wide figure generated by applying a sales multiplier to a global estimate of marketing expenditures. They are not the product of a detailed sector and firm analysis such as that conducted by Fishman. Furthermore, Fishman has determined that such approaches capture sales in which the consequence of direct marketing communication was either

traffic generation and in-store sales or to gather leads from personal (door-to-door) sales. They also capture direct marketing activity occurring after a retail sale for billing, customer service, or other nonsales reasons. For all these reasons, these other sources and estimates of mail order sales are not suitable. Fishman's approach, on the other hand, is defensible. It focuses on direct estimates of sales from identifiable companies and knowledgeable industry sources.

3. Methodology for Deriving Potential Use Tax Increases

This chapter explains the steps that were taken to derive the potential incremental tax revenues that would result if states were permitted to require out-of-state mail order businesses to collect use taxes.

OVERVIEW

In brief, the potential increases in use tax revenues were derived as follows. Nationwide mail order sales in 1991 (\$162,050 million) were used as the initial base of taxable sales.⁴ The mail order sales volume of product and service segments that contained products or services that are tax exempt nationally or on which sales/use taxes are already collected nationwide were the first subtractions from the mail order sales base. The sales of businesses with mail order sales of less than \$10 million were then subtracted.

The remaining sales volume was distributed across the states based on personal disposable income. Then subtractions were made for state-specific business presence and tax exemptions. The result of these downward adjustments are the sales that could generate new use tax collections. State and local tax rates were applied to these sales to estimate potential use tax increases. The remainder of this chapter provides a more detailed explanation of each step that was taken.

NATIONWIDE ADJUSTMENTS

The *Guide to Mail Order Sales* contains nationwide mail order sales estimates for over 30 product and service segments. Many of these products and services are exempt by essentially all the states, or due to the nature of the product or service, taxes are already collected on the mail order sales in these segments. A summary of the nationwide adjustments that were made is shown in Table 2 on the next page.

⁴Arnold Fishman collects data on both sales and charitable contributions made through mail order. His estimate of 1991 mail order charitable contributions (\$49,910 million) is excluded from the initial taxable base.

U.S. Government Sales

State and local governments are generally considered not to have the authority to tax sales by the U.S. government, and therefore, these sales (\$784 million) were removed from the base.

Table 2. Nationwide Adjustments^a to the Mail Order Sales Base

	Millions of dollars
U.S. government sales	784
Newspapers	3,020
Local department/specialty stores	7,190
Catalog showrooms	730
Prescription drug sales	1,081
Sales to resellers	639
Consumer services	42,593
Business communications	4,140
Air freight	1,380
General mail order marketers	30,400

^aProduct or service segments that are nationally tax exempt or for which taxes are already being collected nationwide.

Source: Nathan Associates Inc.

Newspapers

The sales of newspapers (\$3,020 million) were removed from the base. After careful research, it is our judgment that essentially newspaper sales would not generate new use tax collections. Of the 50 states and the District of Columbia, 34 do not tax the sales of newspaper subscriptions. According to Mr. Fishman about 90 percent of the newspaper sales (\$2,718 million) is accounted for by circulation revenue of daily newspaper subscriptions. Based on data from the Newspaper Association of America, about \$2,560 million in sales is via home delivery and \$158 million in sales is via postal delivery. Any home delivery would necessitate a physical presence and, thus, taxes are collected on these sales. Based on other information from the Newspaper Association of American, taxes are collected on the vast majority of daily newspaper sales made via postal delivery, since most of the delivery is in-state. Of the remaining \$302 million in sales that are accounted by weekly newspapers, taxes are collected on most of the sales, since 85-90 percent of the weeklies are in-state newspapers, based on information from the National Newspaper Association.

Local Department/Specialty Stores and Catalog Showrooms

The sales of local department and specialty store (\$7,190 million) and catalog showrooms (\$730 million) are two other downward adjustments that were made. The Fishman data includes sales where the order is made by phone and mail and then the customer picks up the product at the store. This arrangement characterizes the mail order sales of local department specialty stores and catalog showrooms. Sometimes this arrangement may be augmented by deliveries within a short distance of the store. The sellers are collecting tax on these transactions, since these mail order sales are finalized in the store or in-state.

Prescription Drug Sales and Sales to Resellers

Prescription drug sales and the sale of goods for resale are essentially tax exempt nationwide. Therefore, mail order sales of prescription drugs (\$1,081 million) and goods sold to resellers (\$639 million) were removed from the taxable base.

Consumer Services

Mail order sales of all segments categorized under consumer services by Mr. Fishman were excluded from the use tax base, except for astrology and photofinishing, which are actually more product than service-oriented segments. These sales were removed since services are not as extensively subject to sales and use taxes as are products and only a few states, such as Hawaii and New Mexico, broadly tax services. In addition, the seller is often required to collect the tax, since the provision of the service necessitates a physical presence at the place of the consumer.

One example of a consumer service where the provider has a physical presence at the place of the customer is cable TV. Cable TV operators (mail order sales of \$17,880 million) have a physical presence in the communities in which they provide service, and collect and remit any sales tax that might be imposed. Taxes on admission to cultural events (\$840 million in mail order sales) and sports events (\$1,000 million in mail order sales) are venue-based or, in other words, the tax applies only to events in the state. For example, New Jersey, which has an admission tax, would not charge a state resident a use tax for going to a football game in Philadelphia. Any taxes on the mail order sales in the service contract segment (\$400 million) would be collectable, since the contracts are for repairs

where the service provider comes to the customer's home to repair major appliances. Even taxes on 900-number services (\$1,230 million in sales) would be collectable, since they are operated by the long-distance telephone operators, such as AT&T, MCI, and Sprint, which have nexus where they provide service.

Insurance (\$14,960 million in mail order sales) is usually not subject to a sales tax, but rather a premium tax. Insurance companies are required to report to state regulatory authorities the amount of premiums sold in the state, and a premium tax is imposed on and collected from the insurance companies.

In total, mail order sales of consumer services (those discussed here as examples and others) removed from the base are \$42,593 million. This removal is fairly consistent with the ACIR report, which removed all consumer services from the base.

Business Communications and Air Freight

The business communications segment had mail order sales of \$4,140 million in 1991 and includes only long distance telephone operators (e.g., AT&T), which collect any sales or use tax, since they have a presence in the states where they provide service. The air freight segment had mail order sales of \$1,380 million, and again, any tax would be collected, since an air freight company has a physical presence where it provides service. Thus, the mail order sales for business communications and air freight were subtracted from the base.

General Mail Order Marketers

One market segment used by Fishman includes industrial firms that use multiple distribution methods, where mail order is only a minor component. These companies probably have a physical presence where they sell by mail order, since they use primarily other methods of distribution; the small firms in the segment would be partially analogous to local department and specialty stores, and the large ones could be comparable to J.C. Penney, which has a physical presence in nearly every state. The industrial goods that make up this segment are usually tax exempt in most states. There are thousands of these firms, and many are probably small with sales below the \$10 million threshold. Based on these factors, the mail order sales of this segment (\$30,400 million) would likely not generate increases in use tax revenues and were removed from the tax base.

DE MINIMIS PROVISION

After nationwide downward adjustments were made, the sales of mail order businesses with sales of less than \$10 million were removed from the sales of the product and service segments remaining in the base. The adjustment totaled \$20.677 million. The adjustment was based on size distribution data on catalog and mail order houses from the *1987 Census of Retail Trade*. This was the same methodology employed by ACIR.

A *de minimis* provision was employed because small mail order firms would likely be excluded by any federal legislation permitting the taxation of interstate mail order sales. Small mail order firms would likely be excluded since they would face proportionately extreme compliance costs in tracking rates and exemptions and in collecting the taxes for states and for thousands of local tax jurisdictions. A \$10 million *de minimis* level is more conservative than the threshold we have used in the past. The threshold in our previous study was \$12.5 million. In its recommendations of September 1985 to Congress on legislation to overturn *National Bellas Hess*, ACIR recommended that the *de minimis* provision "should be no less than \$12.5 million in gross sales, indexed annually to the Consumer Price Index to account for inflation."⁵ If the *de minimis* level were adjusted for the inflation from September 1985 to September 1993, it would be \$16.7 million. The \$12.5 million level was recommended by ACIR in September 1985, since at that time the Small Business Administration used that figure to define the size of a small mail order firm.

At this time the Small Business Administration continues to use the \$12.5 million threshold, but recognizes the need for an inflationary adjustment and has proposed that the size standard for mail order firms be raised to \$18 million.⁶

STATE-SPECIFIC ADJUSTMENTS

State-level Mail Order Sales

After nationwide adjustments and sales of small mail order businesses were subtracted, the remaining sales volume was distributed across the states based on personal disposable income.⁷ This is the procedure followed in our previous study, and subsequent research did not reveal a more appropriate

⁵Advisory Commission on Intergovernmental Relations, *State and Local Taxation of Out-of-State Mail Order Sales* (A-105), April 1986, page 15.

⁶*Federal Register*, September 2, 1993, page 46573.

⁷U.S. Department of Commerce, *Survey of Current Business*, August 1992, page 49.

method. We believe, however, that personal disposable income is a better proxy than the personal income measure used in the ACIR report to allocate nationwide mail order sales among the states. Personal income includes income that is unavailable for the purchase of goods and services, such as income that goes toward personal contributions for social insurance and toward personal tax and nontax payments.

At this stage, mail order sales in states without a sales tax on the state or local level were removed from the base. This adjustment totaled \$1.047 million.

Nexus Adjustments

Adjustments were made to the remaining sales volume in the base to remove firm sales in states where firms had a presence or collected taxes. Using Mr. Fishman's data on specific mail order businesses, Nathan Associates conducted research on the firms with sales above the *de minimis* level to determine the states where they had a presence or collected tax. Phone and facsimile surveys were conducted of the firms; the survey was supplemented by researching tax information in the catalogs of mail order companies and by a literature search on company-specific tax and nexus information. Information was obtained on companies whose combined revenue accounted for about 75 percent of the sales volume remaining in the base. Using the company-specific data, nexus adjustments were made for the sales volume on which nexus information could not be obtained. To carry out the adjustments, it was assumed that each firm's sales were distributed across the states in the same manner as personal disposable income, or in other words, the distribution of each firm's sales among the states are the same. In total, the nexus adjustments removed \$23.683 million from the tax base.

Other Adjustments

Another reduction in the base was made to reflect three products that are sometimes or are frequently exempted: apparel, food, and magazines. The adjustment for these exemptions totaled \$2.625 million.

POTENTIAL USE TAX BASE AND USE TAX RATES

After all adjustments, the incremental use tax base that would result from allowing the taxation of interstate mail order sales is \$22.061 million. Table 3 shows the estimated tax base for each state and the state and local use tax rates that were applied to the tax bases to estimate the potential gain in use tax revenues. Average local tax rates were calculated using the ratio of local to state sales tax collection.

Table 3. Potential Use Tax Base and State and Local Use Tax Rates

State	Potential use tax base (\$mil)	Use tax rate (percent)		
		State	Local	Combined
Alabama	422.5	4.000	2.387	6.387
Alaska	83.4	--	3.097	3.097
Arizona	364.1	5.000	1.090	6.090
Arkansas	197.5	4.500	0.808	5.308
California	1,870.6	6.000	1.525	7.525
Colorado	377.5	3.000	3.160	6.160
Connecticut	331.1	6.000	--	6.000
District of Columbia	78.4	6.000	--	6.000
Florida	1,228.7	6.000	0.071	6.071
Georgia	575.3	4.000	1.270	5.270
Hawaii	149.3	4.000	--	4.000
Idaho	118.3	5.000	--	5.000
Illinois	922.1	6.250	1.886	8.136
Indiana	583.9	5.000	--	5.000
Iowa	281.9	4.000	0.116	4.116
Kansas	285.1	4.250	0.987	5.237
Kentucky	363.7	6.000	--	6.000
Louisiana	410.9	4.000	4.190	8.190
Maine	121.3	6.000	--	6.000
Maryland	621.9	5.000	--	5.000
Massachusetts	577.1	5.000	--	5.000
Michigan	915.4	4.000	--	4.000
Minnesota	324.4	6.500	0.051	6.551
Mississippi	225.7	6.000	0.244	6.244
Missouri	525.5	4.225	1.524	5.749
Nebraska	151.8	5.000	0.794	5.794
Nevada	150.8	5.750	0.049	5.799
New Jersey	770.8	7.000	--	7.000
New Mexico	170.9	5.000	1.073	6.073
New York	1,493.5	4.000	3.607	7.607
North Carolina	589.2	4.000	1.897	5.897
North Dakota	68.6	5.000	0.344	5.344
Ohio	892.7	5.000	0.834	5.834
Oklahoma	272.5	4.500	2.624	7.124
Pennsylvania	1,028.9	6.000	--	6.000
Rhode Island	109.0	7.000	--	7.000
South Carolina	338.1	5.000	--	5.000
South Dakota	80.6	4.000	1.438	5.438
Tennessee	500.0	5.500	1.717	7.217
Texas	1,416.6	6.250	1.356	7.606
Utah	163.3	5.000	1.081	6.081
Vermont	72.2	5.000	--	5.000
Virginia	587.2	3.500	1.106	4.606
Washington	589.1	6.500	0.930	7.430
West Virginia	174.9	6.000	--	6.000
Wisconsin	430.7	5.000	0.079	5.079
Wyoming	45.2	3.000	0.721	3.721
United States	22,061.2	5.178	1.087	6.265

Note: Delaware, Montana, New Hampshire, and Oregon do not have sales taxes on either the state or local level. Local tax rates are average rates based on the ratios of state and local tax collections, except for Alaska. The Alaska local rate is a simple average of local sales tax rates, since Alaska has no sales tax at the state level. Totals may not sum due to rounding.

Source: U.S. Department of Commerce, Bureau of the Census, *Governmental Finances: 1990-91*, Commerce Clearing House, Inc., *State Tax Guide*; Nathan Associates Inc.

For example, if a state has a 4 percent use tax rate and local sales tax revenue is 25 percent of state sales tax revenue, then the average local tax rate is equal to 1 percent and the combined rate is 5 percent. The national average state local use tax rate was 6.265 percent and the combined rate ranged from a low of 3.097 percent in Alaska to a high of 8.190 percent in Louisiana.

4. Estimates of Potential Use Tax Increases

OVERVIEW

From the methodology described in detail in Chapter 3, it is estimated that only \$1,382 million in additional state and local government revenue would have been generated in 1991 had interstate mail order sales been taxed. Table 4 summarizes the steps that were taken to derive this estimate.

Table 4. Summary of Methodology and Results

	Millions of dollars
U.S. mail order sales in 1991	162,050
Downward adjustments	
Nationwide adjustments ^a	
U.S. government sales	784
Newspapers	3,020
Local department/specialty stores	7,190
Catalog showrooms	730
Prescription drug sales	1,081
Sales to resellers	639
Consumer services	42,593
Business communications	4,140
Air freight	1,380
General mail order marketers	<u>30,400</u>
	91,957
Sales of firms with annual revenues of less than \$10.0 million	20,677
Sales in states without a state or local use tax	1,047
State-specific nexus adjustments	23,683
State-specific exemption adjustments	<u>2,625</u>
Potential additional use tax base	22,061
Combined state/local use tax rate	6.265%
Potential additional use tax revenue in 1991	<u>1,382</u>

^aProduct or service segments that are nationally tax exempt or for which taxes are already being collected nationwide.

Source: Nathan Associates Inc.

STATE-BY-STATE ESTIMATES

The potential gains by state are shown in Table 5 for state and local governments, separately and combined. The potential gain for each state varies greatly, ranging from \$1.7 million for Wyoming to \$141.4 million for California. The nineteen states (not including the four states without a state or local sales tax) that would gain the least account for 11 percent of the nationwide potential gain and would each add less than \$16 million to their state and local government revenues. Twenty-three states would each potentially gain \$16-65 million. Thirty-seven percent of the potential nationwide gain is accounted for by just five states: California, New York, Texas, Illinois, and Florida. Each of these states would potentially gain more than \$70 million.

COMPARISON TO OTHER STATE/LOCAL REVENUE

The potential revenue from taxing interstate mail order sales is inconsequential when compared to current state and local government revenue. The potential revenue is only 0.19 percent of the \$732.1 billion in state and local government revenues in 1991, excluding federal grants.⁸ In other words, taxing interstate sales would not even add two dollars to every one thousand dollars already collected by state and local governments from their own sources. As shown in Table 6, the percentage is insignificant for all states, ranging from a low of 0.04 percent for Alaska to 0.34 percent for Tennessee. When federal grants are included in state and local revenue, the estimated potential use tax potential from mail order is even more insignificant in comparison: the potential use tax revenue is only 0.16 percent of the \$882.5 billion in general revenue of state and local governments in 1991.

COMPARISON TO THE 1984 ESTIMATE

The potential use tax revenue has about doubled since 1984 to \$1,382 million in 1991. The increase is accounted by the fact that state and local use tax rates have risen. Also, Mr. Fishman's estimate of nationwide mail order sales and contributions has grown by 83.6 percent, from \$115,455 million in 1984 to \$211,960 million in 1991. His higher estimate is from better reporting and from real and inflationary growth in mail order sales.

⁸The 732.1 billion figure also excludes the revenue of states without a sales tax on the state or local level (i.e., Delaware, Montana, New Hampshire, and Oregon).

Table 5. Estimated Potential Use Tax Revenue in 1991 from
Taxing Interstate Mail Order Sales (\$millions)

State	State government	Local government	State and local government
Alabama	16.9	10.1	27.0
Alaska	--	2.6	2.6
Arizona	18.2	4.0	22.2
Arkansas	8.9	1.6	10.5
California	112.8	28.7	141.4
Colorado	11.3	11.9	23.3
Connecticut	19.9	--	19.9
District of Columbia	4.7	--	4.7
Florida	73.7	0.9	74.6
Georgia	23.0	7.3	30.3
Hawaii	6.0	--	6.0
Idaho	5.9	--	5.9
Illinois	57.6	17.4	75.0
Indiana	29.2	--	29.2
Iowa	11.3	0.3	11.6
Kansas	12.1	2.8	14.9
Kentucky	21.8	--	21.8
Louisiana	16.4	17.2	33.7
Maine	7.3	--	7.3
Maryland	31.1	--	31.1
Massachusetts	28.9	--	28.9
Michigan	36.6	--	36.6
Minnesota	21.1	0.2	21.2
Mississippi	13.5	0.6	14.1
Missouri	22.2	8.0	30.2
Nebraska	7.6	1.2	8.8
Nevada	8.7	0.1	8.7
New Jersey	54.0	--	54.0
New Mexico	8.5	1.8	10.4
New York	59.7	53.9	113.6
North Carolina	23.6	11.2	34.7
North Dakota	3.4	0.2	3.7
Ohio	44.6	7.4	52.1
Oklahoma	12.3	7.2	19.4
Pennsylvania	61.7	--	61.7
Rhode Island	7.6	--	7.6
South Carolina	16.9	--	16.9
South Dakota	3.2	1.2	4.4
Tennessee	27.5	8.6	36.1
Texas	88.5	19.2	107.7
Utah	8.2	1.8	9.9
Vermont	3.6	0.0	3.6
Virginia	20.6	6.5	27.0
Washington	38.3	5.5	43.8
West Virginia	10.5	--	10.5
Wisconsin	21.5	0.3	21.9
Wyoming	1.4	0.3	1.7
United States	1,142.4	239.8	1,382.2

Note: Delaware, Montana, New Hampshire, and Oregon do not have sales taxes on either the state or local level.
Totals may not sum due to rounding.

Source: Nathan Associates Inc.

Table 6. Estimated Potential Use Tax Revenue as a Percentage of
State and Local Government Revenue in 1991

State	Potential use tax revenue as a percentage of	
	Revenue from own sources	General revenue ¹
Alabama	0.293	0.229
Alaska	0.041	0.036
Arizona	0.210	0.179
Arkansas	0.226	0.177
California	0.141	0.117
Colorado	0.231	0.196
Connecticut	0.178	0.148
District of Columbia	0.158	0.099
Florida	0.198	0.173
Georgia	0.174	0.143
Hawaii	0.132	0.112
Idaho	0.238	0.193
Illinois	0.231	0.196
Indiana	0.202	0.169
Iowa	0.145	0.121
Kansas	0.215	0.183
Kentucky	0.239	0.190
Louisiana	0.298	0.233
Maine	0.215	0.173
Maryland	0.211	0.179
Massachusetts	0.145	0.118
Michigan	0.130	0.108
Minnesota	0.136	0.114
Mississippi	0.264	0.192
Missouri	0.263	0.215
Nebraska	0.192	0.162
Nevada	0.234	0.202
New Jersey	0.191	0.164
New Mexico	0.227	0.185
New York	0.144	0.119
North Carolina	0.216	0.177
North Dakota	0.199	0.154
Ohio	0.183	0.150
Oklahoma	0.246	0.203
Pennsylvania	0.199	0.165
Rhode Island	0.269	0.209
South Carolina	0.200	0.158
South Dakota	0.273	0.203
Tennessee	0.341	0.264
Texas	0.244	0.205
Utah	0.230	0.184
Vermont	0.211	0.165
Virginia	0.154	0.133
Washington	0.275	0.230
West Virginia	0.242	0.191
Wisconsin	0.145	0.121
Wyoming	0.087	0.067
United States	0.189	0.157

Note: Delaware, Montana, New Hampshire, and Oregon do not have sales taxes on either the state or local level.

¹Revenue from own sources plus federal grants to state and local governments.

Source: U.S. Department of the Commerce, Bureau of the Census, *Governmental Finances, 1990-91*; Nathan Associates Inc.

THE ESTIMATE IS OVERSTATED

Our estimate of the potential use tax revenue from the taxation of interstate mail order revenue is actually a potential revenue ceiling. More than several items, if they could be quantified, would reduce our estimate.

If interstate mail order sales were taxed, there would probably be substantial noncompliance, especially in the short run. Hundreds of affected firms would need to learn about the state laws of 45 states (and the District of Columbia) and thousands of local tax jurisdictions, and set up a tax collection system. During this process it is likely there would be some inadvertent noncompliance and underreporting of taxable sales. For this reason, some potential revenue would probably not actually be collected.

State governments would incur costs to administer the tax. Hundreds of out-of-state firms would be affected by the law, and collection and enforcement costs of the state governments would rise. These costs would probably be most burdensome to smaller states. Thus, administration and enforcement costs would offset some of the potential revenue.

The estimation methodology also assumes that the level of mail order sales would not be affected by the new taxation. It is likely, however, that the tax and firms' costs to collect the tax would effectively increase the price of mail order products and services to consumers and lower the level of sales, which would in turn lower potential use tax receipts. Also the catalog and mailhouse industry employs over 140,000 people,⁹ and a substantial number of these people could become unemployed and increase the states' unemployment compensation payments.

There is also sales volume remaining in our tax base that is tax exempt. The sales volume remains in the tax base, however, because we could not quantify the affected sales volume. For example, we could not find a reasonable procedure to determine the amount of mail order sales to charitable, religious and educational organizations, state and local governments, and federally chartered banks that are tax exempt in many states. Our tax base is too high to the extent that our tax base includes sales which are affected by these exemptions.

We also could not measure the amount of the sales volume on which use taxes are already paid by purchasers. This amount could be especially significant for businesses that buy by mail order. The probability of firms above the \$10.0 million *de minimis* level being audited by state taxing authorities is probably sufficiently high to cause these firms to pay any use taxes they owe. According to the

⁹U.S. Department of Commerce, *County Business Patterns, 1990*.

Direct Marketing Association, ten states collect a use tax directly from customers through the state's income tax form.¹⁰

To the extent that the above factors could not be measured, we have overstated the potential use tax revenue from taxing interstate mail order sales.

¹⁰According to the Direct Marketing Association, only the State of Maine out of these ten states has an effective method for collecting mail order use taxes. The Maine statute, which took effect in 1991, led to the collection of \$1.7 million (of an estimated \$7.3 million of use tax owed or 23 percent of the estimated amount owed). While a number of states list a line on their income tax forms to attempt to collect use tax on out-of-state purchases, only Maine has a "default provision." If a Maine taxpayer leaves the line blank (thus declaring no purchases from out-of-state marketers were made), or fails to sign that line of the form (under penalty of perjury), then the state automatically adds an amount equal to the average tax owed on out-of-state purchases, calculated at 0.0366 percent of the taxpayer's taxable income. For example, if a taxpayer has \$30,000 of taxable income, the tax would be \$11.00. DMA believes Maine's collection level of 23 percent is significant since 1991 was the first year of implementation of the new statute and the state employed no added enforcement effort to increase compliance with the new provision.

Appendix A

**MARKET SEGMENTS AND SUBSEGMENTS USED
IN THE GUIDE TO MAIL ORDER SALES**

Segment/subsegments	Segment/subsegments
Animal Care	<ul style="list-style-type: none"> • Educational • Publications • Technical • Arts • Children • Foreign languages • Print • Professional • Reference • Regional • Religious • Special consumer interests • University presses • Accessories • Services
<ul style="list-style-type: none"> • General • Specialties • Bee supplies • Bird supplies • Cat supplies • Dog supplies • Fish supplies • Hatcheries • Horse suppliers 	
Astrology/Occult	
<ul style="list-style-type: none"> • General 	
Audio-Video	Business Supplies
<ul style="list-style-type: none"> • Records • Musical Instruments <ul style="list-style-type: none"> • General • Antique instruments • Guitars/banjoes • Service • Specialty • Sheet music • Stereo equipment/video equipment • Stereo supplies • Audio accessories • Video 	<ul style="list-style-type: none"> • Business supplies full line • Business forms full line • Business supplies: data processing oriented • Stationary specialties: nonprofessional • Stationary/equipment specialties: professional • Personal stationary • Business specialties: libraries and schools • Business cards/stationary • Office advertising specialties • Office specialties: executive gifts • Office equipment specialties: appliances/machines/filing and storage • Art/drafting office supplies • Office furniture • Office printing supplies • Rubber stamps
Books	
<ul style="list-style-type: none"> • General • Book clubs 	

Continued

Segment/subsegments	Segment/subsegments
<ul style="list-style-type: none"> • Computer hardware • Computer software 	
Business Services	
<ul style="list-style-type: none"> • Information • Communications • Air freight • Trade subscriptions 	
Apparel	
<ul style="list-style-type: none"> • Children • Family • Men's • Accessories • Shoes • Specialty <ul style="list-style-type: none"> • Miscellaneous • Dance • By material • Men's big and small • Military • Region/imports • By type of garment • Sportswear • Western wear • Women's big and small • Work clothes • Women's • Lingerie/hosiery 	
Collectibles	
<ul style="list-style-type: none"> • General • Antiques • Art • Nonreproducibles • Reproducibles • Reproducibles: porcelains • Stamps and coins • Accessories • Investment 	
	Cosmetics/Beauty Aids
	<ul style="list-style-type: none"> • General • Miscellaneous specialties • Art supplies • Candles • Ceramics/plasters • Caning and basketry • Clockmaking • Dolls • Needlework • Glass art • Jewelry • Leather • Metals • Model Building • Textile materials • Weaving/rughooking • Wine and beermaking • Woodworking • Ethnic/regional • Macrame
	Educational Services
	<ul style="list-style-type: none"> • General • Correspondence courses/schools • Educational aids • Motivational
	Financial Services
	<ul style="list-style-type: none"> • Discount Brokerage • No Load Mutual Funds • Credit Card Services
	Food
	<ul style="list-style-type: none"> • General • Baked goods • Food preparation materials • Dairy • Fish • Fruit

Continued

Segment/subsegments	Segment/subsegments
<ul style="list-style-type: none"> • Gourmet/fancy foods • Herbs/beverages/spices • Liquor/wine • Maple syrup, jellies, jams, preserves • Meats • Natural/camping • Nuts • Recipes • Regional/ethnic • Snacks/candy 	Gifts <ul style="list-style-type: none"> • Accessories • General <ul style="list-style-type: none"> • Low end • High end • Museums • Specialized <ul style="list-style-type: none"> • Engraved/personalized • Handmade • Hard gifts • Imports • Indian crafts • Left handers • Nature oriented • Nautical • Regional
Gardening <ul style="list-style-type: none"> • Miscellaneous • General supplies • Bulbs • Indoor • Nursery stock • Tools, supplies, equipment, greenhouses • Trees, shrubs 	Hardware/Tools <ul style="list-style-type: none"> • Hardware • Hardware and tools • Specialty <ul style="list-style-type: none"> • Specialty tools • Specialty hardware • Tools • Machine tools • Metalworking tools • Woodworking tools
General Merchandise <ul style="list-style-type: none"> • Catalog retailers • Syndication <ul style="list-style-type: none"> • Oil company • In-flight • Manufacturer • Nonmanufacturer • Department store • Catalog showrooms • Department stores <ul style="list-style-type: none"> • Local • National mail order • Multi-product <ul style="list-style-type: none"> • Catalog • Noncatalog • Home shopping TV • TV, videotex, infomercials • Credit card; travel and entertainment • Membership organizations 	Health <ul style="list-style-type: none"> • General • Drugs/vitamins • Optical products • Hearing aids • Novelties • Clothing • Diet programs • Soft goods • Yard goods • Physical fitness • Courses • Aids for the handicapped

Continued

Segment/subsegments	Segment subsegments
<ul style="list-style-type: none"> • Sleep/relaxation programs • Bio rhythms systems 	<ul style="list-style-type: none"> • Cutlery • Kitchen utensils • Personal goods-leather • General appliances • Fireplace • Home maintenance supplies
Home Construction	Industrial
<ul style="list-style-type: none"> • Ceiling fans • Cupolas • Domes • Fireplace • Home plans • Hot tubs/saunas • Log homes • Real estate • Security • Solar • Stairs • Telephones • Wall coverings • Wind systems • Alternative energy • Exterior building materials • Outdoors-functional/maintenance • Interior building-decorative • Home making kits-miscellaneous • Heating systems equipment-general 	<ul style="list-style-type: none"> • General • Chemical products • Farm and ranch • Fishing • Forestry • Hotels • Law enforcement • Medical • Mining • Pharmaceutical • Service clubs/lodges • Theater • Industrial equipment and supplies <ul style="list-style-type: none"> • General • Specialized • Surplus • Instrument products • Marine products • Materials handling • Safety/security products • Scientific products • Electronics • Technician supplies • Commercial/retail
Home Furnishings	Insurance
<ul style="list-style-type: none"> • Miscellaneous • Decorative <ul style="list-style-type: none"> • Curtains/bedspreads • Lamps/chandeliers/mirrors/clocks • Rugs/tapestries • Wood carvings • Furniture <ul style="list-style-type: none"> • General • Period reproductions • Material specialty • Use specialty by style and type • Unclassified • Housewares <ul style="list-style-type: none"> • General • Bedroom • Bath 	<ul style="list-style-type: none"> • Open Market • Closed market • Catalog retailers
	Jewelry
	<ul style="list-style-type: none"> • Fashion • Investment

Continued

Segment/subsegments	Segment/subsegments
Magazine Subscriptions	<ul style="list-style-type: none"> • Specialized • Announcements • Greeting cards • Wine labels
<ul style="list-style-type: none"> • Publishers • Agents 	
Photography	Tobacco
<ul style="list-style-type: none"> • Accessories for film processing • Camera equipment • Slides • Photo storage • Film processing • Portraits 	<ul style="list-style-type: none"> • General
Consumer Electronics	Toys
<ul style="list-style-type: none"> • Products • Personal computers: hardware • Personal computers: software 	<ul style="list-style-type: none"> • General • Miscellaneous specialties • Doll houses • Emblems/trophies • Games/play equipment • Magic supplies • Novelties • Wooden • Gambling/games • Children's/mothers' products • Educational
Scientific	
<ul style="list-style-type: none"> • General • Specialized 	Vehicles
Sporting Goods	<ul style="list-style-type: none"> • Automotive supplies-general • Off-road vehicles • Automotive: antique • Model specific supplies • Automotive <ul style="list-style-type: none"> • Novelties • Camping • Racing • Automotive supplies-specialized • Pickups-trucks/tractors • Aviation-supplies-specialized • Bicycle/motorcycle
<ul style="list-style-type: none"> • General • Apparel oriented • Athletic equipment • Camping supplies • Equestrian supplies • Fishing supplies, aquatic • Hiking, mountaineering • Hunting equipment • Marine equipment <ul style="list-style-type: none"> • Boats • Boat plans, models • Equipment • Ski equipment 	Cable TV
Stationary	Auto Clubs
<ul style="list-style-type: none"> • General 	Consumer Services

Continued

Segment/subsegments	Segment/subsegments
<ul style="list-style-type: none">• Cultural events• Flowers by mail• Information service programming• Service contracts• Sports events• Prepaid legal	

The CHAIRMAN. Thank you, Mr. Edmund.

Mr. Regez, let me ask you and Mr. Edmund both this question: What if all sales in this country were by mail order? What would local jurisdictions, education and so on, do?

Mr. REGEZ. I am sure they would find another way to fund their situations through income taxes.

The CHAIRMAN. Where would you suggest finding it?

Mr. REGEZ. Senator, I believe there is definitely the income tax, the Federal excise taxes, there are different types of taxes that could be levied, I am sure.

The CHAIRMAN. Mr. Edmund, would you like to respond to that?

Mr. EDMUND. Well, if we are saying that everything occurred by mail order, I am most familiar with the business and educational side of this, and as I said, that money is already being collected. Because if a business or a school buys out of State and they have to pay the tax, they are already doing it.

The example used in the consumer case in Maine happens on an almost 100 percent basis already with businesses. If a dentist buys equipment for his office that is taxable, on his business reporting forms to his own State he has to pay the use tax, and they do, and we do that, and mostly all businesses are currently doing that.

These are some of the reasons that we think that many of these studies about the potential of this tax are highly inflated, because they are not looking at a lot of these purchases. They look at a mail order firm and they say, well, gee, 100 percent of what they sold would have been taxed, but some of the tax is already being paid on a lot of that.

If you look at a company like mine, I would tell you that almost all of the tax that is due is already being paid by the purchasers.

The CHAIRMAN. You stated in your testimony, Mr. Edmund, that oftentimes for people who order from your company in New Jersey, you have to collect the sales tax on that because you have a presence in New Jersey. And you state that oftentimes people understate the amount of sales tax when they remit. You have also stated that your company usually eats the difference. In other words, you do not send them a letter back and say please send us 33 more cents. What do you do if they over-estimate? I assume some of them pay more than they should.

Mr. EDMUND. Then we put a refund check in with the goods going out and they do get it back.

The CHAIRMAN. You send a check if they overpay?

Mr. EDMUND. Yes. For the bulk of our sales it is not a problem because in most cases we are really an open account. But in cases where it is prepaid we would send the difference back.

The CHAIRMAN. I assume you were in the room when I showed a list of catalogs of companies who collect this tax, and you heard Senator Bennett say that he is a part of a company that does \$200 million in business in all 50 States and they found that this collection is not a burden at all. They started not to even go into the business because they thought this was a big problem for them. Yet they decided to go ahead and charge the sales tax and remit to the individual States, which they now do. Why is this not a burden for his company but it is for you?

Mr. EDMUND. Okay, in the Senator's case, as I say, it is really sort of a pure vanilla case in that his products to his customers are all taxable. So he is not dealing with a situation where he has to consider that some of the purchases are exempt and some are not.

Now, in examples as I would give you, if someone buys 200 lenses from me to build into a product—

The CHAIRMAN. 200 what?

Mr. EDMUND. Lenses, optics, that they are going to build into an instrument and resell, that is an exempt purchase, and there is no tax due.

If, however, somebody buys a microscope or a magnifier from us to use in their office or to use in their work, that is probably taxable and each case has to be looked at. As I say, it gets very confusing when you get a purchase order with 20 items on it and some of them are exempt and some are not, and that is just not uncommon for us.

The CHAIRMAN. Well, for example, with Sears and Roebuck, for many, many years, a big part of their sales were catalog sales. They are out of the catalog sales business now, but at one time when I was a kid that is where everybody got their merchandise. And yes, they collected sales tax in every State they did business in. I just do not understand why it has suddenly become such a big burden when even 50 years ago Sears and Roebuck was doing it and they put a little page in the back of their catalog. They did not even have 1-800 numbers with which to advise their customers who called in.

I have looked at both of your catalogs and you both have, not 800 numbers, but numbers for customer service. And all anybody has to do if they have a question about it is call that number for customer service.

But Sears used to put the taxes in every annual catalog. They put by State how much you should include with your remittance. If you were from Arkansas, you would add 4 percent to the cost of your purchase. That just does not seem like that big a deal to me.

Mr. EDMUND. Well, Senator, even 50 years ago Sears had stores in most States.

The CHAIRMAN. Well, that is the reason they did it, of course, because they had a presence in every State, but most of their sales were by mail order, and that is my point.

Mr. EDMUND. But they had the double benefit of retail sales, too. You can afford to have the legal counsel and all of the extra people that you need to be able to administer the taxes in each of the States.

The other thing in terms of saying it as simple as me putting the chart in my catalog, as I was trying to point out, you cannot chart what I am talking about in terms of it being exempt or nonexempt because it is relative to the use of the product by the person who is buying it. And that is where the great debate comes into play about should you or should you not.

We spend a great deal of time in New Jersey giving back or applying credits on sales tax because what the New Jersey agents told us is basically they say if you get an order and the customer does not indicate to you that it is tax exempt, that we should take the stance that it is taxable and we should apply the tax. On a reg-

ular basis when we get paid, we get invoices coming back and they say the invoice is too high. This was tax exempt. Give us a credit. And that takes time, costs money, and it is a burden.

The CHAIRMAN. We have a vote occurring on the Senate floor and we only have about 5 to 10 minutes left before we are going to have to adjourn this meeting, so I want to defer to Senator Kohl who has a fine constituent in front of him.

OPENING STATEMENT OF HON. HERB KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator KOHL. Thank you very much.

Mr. Chairman, I am here to support the position of the mail order companies. In fact, Mr. Chairman, there would be 6100 different local tax rates and 46 different sets of rules, exemptions and filing requirements that would be required if S. 1825 were to become law. This would mean that more than 428 tax forms would have to be filed by a mail order company every month, and that amounts to over 5000 different tax returns a year. It seems to me that is an inordinate amount of extra expense and burden to place on these mail order companies.

In fact, as you point out and as we have pointed out several times today, they can do it at the State level. Maine does it. They could do it more completely at every State level if they want. They could make it more subject to penalty and do whatever they want. I am sure the mail order companies would be very happy to have the States exert every effort they wish at the State level on State tax returns, as they have said here, to collect this burden. So it seems to me they are being as forthright, as cooperative, as possible.

I would just ask Mr. Regez, how much money would it cost Swiss Colony, if they would have to comply with S. 1825?

Mr. REGEZ. We do not have any idea, Senator. We know it would be astronomical because the software that is available simply just will not do the job. It cannot build in the exemptions and so forth.

We have looked and hunted for software, and no software firm in the country has it for sale.

Senator KOHL. Well, I have another question, Mr. Regez. There is a mistaken impression sometimes that mail order companies do not pay State taxes, and I know that is wrong and you know that is wrong. Would you like to offer us some information on what Swiss Colony pays in Wisconsin in State taxes?

Mr. REGEZ. I do not have the amount, but we do pay, Senator, on sales in Wisconsin to Wisconsin residents. We pay income taxes, of course. Our company is a privately held company and those figures are not available for the public.

We own over 1 million square feet of property which we pay property tax on in the State of Wisconsin.

Senator KOHL. So you are a property taxpayer, a State taxpayer, and a Federal taxpayer.

Mr. REGEZ. Right.

Senator KOHL. Around the holiday season, could you tell us what a relatively smaller company like Swiss Colony operating in a very small or middle-size community of about 10,000 people in Monroe, WI, how many people you add on during the holiday season?

Mr. REGEZ. We have a permanent staff of 1000 which swells by another 5000 to 6000 people during the holiday season, all from Southern Wisconsin and Northern Illinois.

Senator KOHL. So you are a big part of the economy in Monroe.

Mr. REGEZ. Very definitely so. We are the largest employer in the county.

Senator KOHL. Again, I just finally want to ask: Am I correct in stating that you encourage, that you have no problem with States on State tax returns requiring their residents to list their catalog purchases and to pay the applicable taxes?

Mr. REGEZ. That is correct, and I do not have any objection to collecting the tax if there is a feasible way to do it that does not place a significant burden upon us.

Senator KOHL. Is that true, Mr. Edmund? You have the same position?

Mr. EDMUND. Absolutely. We encourage the States to do that. We think that is the way to do it. And as I say, that is how they do it with businesses already.

Senator KOHL. Okay.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Do either one of you put notices in your catalogs to your customers that they owe tax on what they buy from you at the local level?

Mr. REGEZ. We do not.

The CHAIRMAN. Do you, Mr. Edmund?

Mr. EDMUND. We do not, but we would be glad to.

The CHAIRMAN. Mr. Regez, how much business does Swiss Colony do a year?

Mr. REGEZ. Approximately \$150 million in sales.

The CHAIRMAN. \$150 million?

Mr. REGEZ. Yes, sir.

The CHAIRMAN. Now, you collect taxes on your sales in Wisconsin, do you not?

Mr. REGEZ. It is a misnomer to say we collect it. We pay it.

The CHAIRMAN. Pardon?

Mr. REGEZ. It is a misnomer to say that we collect it, sir. We pay it. We have an arrangement with the State of Wisconsin where they determine what we have sold in the State—we tell them what we sold in the State and they determine which items are taxable and which are not, and they tell us what tax they want us to pay. We do not collect that.

The CHAIRMAN. Do you both realize that under this bill there will not be 6000 different tax computations, there would only be 45?

Mr. REGEZ. I understand that there is the in lieu of provision that you are offering, yes.

The CHAIRMAN. There is a formula under which you would pay one rate in each State. And my guess is that there would probably only be about 10 different rates. Most States have about the same sales tax rates.

Mr. REGEZ. I do not think the in lieu of provision addresses the exemption questions. For example, in States where food was exempt, what would you do with the in lieu of provision?

The CHAIRMAN. What do retailers do when food is exempt in Christmas packages and you have got a wine bottle, a bottle open-

er, a nutcracker, and 3 pounds of cheese in there? How do retailers handle that? How does Woodies handle that here in Washington?

Mr. REGEZ. I think they could tell the individual that this portion of the product is taxable and that is going to be 6 percent; the rest of it is a food item and it is not. They have only one set of rules to deal with, and that is the Washington set of rules. A mail order company dealing nationally would have your 46 States, if you will, but then the exemptions and so forth are overwhelming.

The CHAIRMAN. Well, gentlemen, first of all let me thank you very much for coming today and giving your testimony. I understand your position. If I were in your position it would probably be the same. But I do appreciate your coming. You have both given very good testimony.

I have read both of your statements. You did not give them in full here, but I read both of them, and I or other members of the Committee might in the next week submit additional questions to you for your response.

Thank you very much. The Committee will stand in recess.

[Whereupon, at 4:09 p.m., the hearing was adjourned.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

TESTIMONY OF WALTER C. LOGAN II, VICE PRESIDENT, MAIL ORDER, STARK BRO'S NURSERIES

The initial concern with the imposition of a sales tax for sales made in a state wherein Nexus has not been established is rooted in the additional administrative costs to collect, monitor changes and remit the sales tax. With over 6,000 sales tax rates across the country, this task would be daunting.

Our experience with the states where we are currently obligated to collect and remit sales tax is complicated and time consuming at best. For example, the State of Utah requires that we keep abreast of sales tax imposed not only at the state level but also within a county where goods are delivered that has a sales tax to support a rural ambulance service. There have also been cases where a change has been made to a rate within the state and the state has failed to provide us notification.

From a marketing standpoint, imposing a tax on mail order purchases will add complexity to the ordering process (i.e. $5.875\% \times \$47.58$). This will in turn cause some not to buy. Sales will be driven down, eliminating some or all of the revenue gains anticipated.

Many of Stark Bro's buyers are older and live in rural areas where comparable selections of products are not available. Due to their age, many are not as mobile as Americans in general. I view this as a form of discrimination to "senior", rural Americans.

Also, much additional space will have to be devoted to listing the tax rates for the various states, counties, etc. This will take away valuable selling space which will have a negative impact on our bottom-line profitability. Again, another means by which projected revenue gains will be offset by reduced income tax receipts from direct marketing companies.

In summary, the imposition of a law that required collection of a sales tax of every state in which a sale was made could establish such an administrative burden on a company, not to mention its customers, it could have a tremendous strain and disastrous effect on profitability.

TESTIMONY OF THE INDUSTRY COUNCIL FOR TANGIBLE ASSETS (ICTA)

The Industry Council for Tangible Assets (ICTA) is a non-profit trade association which represents firms and individuals engaged in buying, selling, distributing, trading, importing, refining, storing, or manufacturing any tangible asset.

Most of ICTA's members buy and sell rare coins, collectible bank notes, and precious metals. They typically market these products via a shop/office, at trade shows, and/or via advertising in several weekly or monthly trade publications. These trade publications are distributed nation-wide to subscribers and do not offer regional editions.

Approximately 80 percent of ICTA's members are "mom and pop" operations with 0-5 employees. They are typical "Main Street Businesses," and they oppose the "Fairness for Main Street Businesses Act." Many do not have computer systems other than word processing programs for mailing lists and inventory management. In most coin shops, bookkeeping is done manually. Administrative costs associated with collecting various use taxes and keeping current on the use tax laws and regulations of many jurisdictions would be prohibitive.

Unlike most other interstate marketers, ICTA's members handle "big ticket" items, such as gold and platinum bullion coins and bars, that usually generate a gross profit margin of less than 1 percent. As a result, many require that gold and platinum transactions be of a minimum of 10 ounces per transaction (approximately \$4000); a typical transaction will be 20 ounces (approximately \$8,000). The proposed \$100,000 per state exemption would require even "mom and pop" operations to compute, collect, and remit sales/use taxes for each state where they do as little as 13 typical transactions in that state per year.

Also, unlike other products, the price or value of rare coins, currency, and, especially, precious metals is subject to frequent market changes which, during certain market conditions, can be considerable. Active financial markets can create a dramatic and sudden increase in volume of business which may or may not be repeated in subsequent years. In an active market, our members would have to periodically evaluate their gross volume to determine if they were approaching the exemption thresholds of \$3,000,000 gross volume or \$100,000 per state. They would then have to weigh the benefits of the increase in income against the high cost of complying with multiple sales/use tax collection responsibilities.

In addition, the merchant cannot know in January that there will be a "boom" in, for example, July. If his volume in September shows the firm is approaching a volume exemption limit, and he did not have the responsibility to collect the taxes in January (since his expected volume was under the limit), does he now have the liability for the taxes on the transactions in the months preceding the "boom" when he could not anticipate this liability and charge his customers accordingly? The sales/use taxes on precious metals always greatly exceed the gross profits on the sale. (Gross profits of less than 1 percent vs. the sales/use tax rate.) If the dealer were responsible for these taxes, he would be taxed into bankruptcy. Alternatively, the dealer would be forced to close his business for the rest of the year once he reached a certain gross volume level.

The very nature of the collectibles industry requires transacting across state lines. Unlike goods that are currently being manufactured, rare coins and currency are of a finite and diminishing supply. Each collectible is unique, and certain items can take considerable time and effort to locate. In fact, a good deal of the activity on the two nation-wide computer networks and at trade shows is devoted to locating certain items for customers.

The premise that consumers buy rare coins and currency from an out-of-state marketer to avoid sales tax cannot be justified. Most of the specific coins dealers buy and sell must be shipped via registered, insured mail, paid for by the consumer. Shipping charges normally exceed any tax savings. Collectors purchase from out-of-state vendors to obtain the one-of-a-kind item they need, not to avoid paying sales tax. This access to large mail order markets is especially important for consumers in rural areas.

Perhaps one of the most heinous aspects of this legislation is the grossly unfair competitive advantage it provides to a major marketer of US coins—the United States Mint. As part of the federal government, the Mint will continue to enjoy its sales/use tax collection exemption regardless of volume. The US Mint is, perhaps, the largest direct mail marketer of US coins, with a mailing list in excess of three million active names. Likewise, the Bureau of Engraving and Printing will be able to sell currency products with that same advantage which is denied individual entrepreneurs.

Senator Bumpers' Act will force thousands of small businesses to make critical changes in the way they do business. ICTA's members will be faced with the following options:

1. Limit out-of-state sales only to a certain few states where the preponderance of their customers reside, thereby limiting the recordkeeping to a more manageable level. Business from residents of other states will be declined. Clients in small states (where there are usually few in-state dealers) will be deprived of or severely limited in their ability to comparison shop since their state will likely be on the "declined" list of many out-of-state dealers.

2. Cease mail order transactions. Many dealers have built their businesses on mail order and would likely just cease operations. This will decimate the trade and hobby publications that depend on advertising income. This also creates a less competitive market for consumers who use advertisements as informational tools to comparison shop. It also deprives consumers of access to specific items of interest. Trade and hobby publication advertising and informative articles provide valuable data to consumers, thereby promoting competition and fair business practices.

3. Cease trade show attendance. Many non-profit clubs and associations rely on coin shows to provide support and forums for their educational efforts, and many dealers do a significant part of their business at these shows. Eliminating these conventions from dealers' business practice will result in the following: (a) dealers will be forced to restructure their business strategy and will lose many important networking contacts; (b) clubs and associations will no longer have the income necessary to continue or forums for important information disseminated to consumers and dealers; (c) consumers will be deprived of the competitive trade show marketplace; and (d) any state where shows are cancelled for lack of participating dealers will lose hotel, restaurant, and other usual convention income and taxes. A number of conventions have already been cancelled in states that have enacted burdensome sales taxes.

ICTA's members are "Main Street Businesses," and they are opposed to S. 1825, the "Fairness for Main Street Businesses Act."

TESTIMONY OF THE ASSOCIATION OF ART MUSEUM DIRECTORS

Mr. Chairman and distinguished members of the Committee, the Association of Art Museum Directors (AAMD), a nonprofit organization with a membership of over 160 major art museums (see attached list), in cooperation with the American Arts

Alliance (AAA), the principle advocate for the Nation's nonprofit arts institutions, is grateful for this opportunity to present testimony on the "Fairness for Main Street Businesses Act" (S. 1825). This legislation, which would obligate art museums to collect and remit state and local sales taxes, under certain conditions, would negatively affect those art museums that rely on mail-order operations as an important source of revenue to achieve fully their educational mission.

BACKGROUND

For many years museums have offered gift items based on their collection, published scholarly books on works of art, produced posters for important exhibits and reproduced paintings from the collection. These items are available to the general public, to schools, libraries and other museums and arts institutions through museum shops on the premises as well as through catalogs, brochures and telephone orders. They contribute to the educational mission of the museum by stimulating and enhancing public awareness, knowledge and appreciation of art. They also provide important revenue as other funding sources diminish.

THEY DO NOT COMPETE WITH MAIN STREET BUSINESSES

Because museums sell only items based on their collection and scholarly books, they do not compete with Main Street business. These products are not available except from museums.

UNINTENDED CONSEQUENCES

In complying with the requirements of this legislation, museums which have combined sales from gift shop, catalog and other mail-order sources of \$3 million would have to register, collect, report and remit state and local sales taxes in 6500 jurisdictions, even in those states and jurisdictions where they have minimal sales. In addition, tax-exempt sales to nonprofit organizations would be aggregated with the taxable sales to calculate the \$3 million threshold, even though tax is not due from these organizations.

Logistical operations in the museums' order department would have to be reorganized. For sales made to tax-exempt organizations the museums would have to design a system that allows them to identify which organizations are not required to pay tax, and then maintain documentation to prove that those customers are tax exempt. For those customers subject to the tax, museums would have to set up a system to contact them when they neglected to add the tax or computed it incorrectly. Those orders would have to be set aside, causing severe delays in their fulfillment. Once the tax errors were corrected, the orders would have to be retrieved and then filled. These two additional steps in the process will add both time and cost to filling orders. For those orders processed by phone, increased time would be necessary to compute the tax for each customer, resulting either in fewer orders processed or additional staff employed to process the orders.

To meet the legislation's collection and remittance requirements, museums would have to augment their software (initially and annually as tax rates change) and hardware computer capabilities and add staff to handle the new reporting requirements.

Another serious problem exists in the potential loss of sales. Any sales loss would negatively impact the revenue museums have available to them for the vital programs they provide. Customers who already pay ever increasing shipping costs would be less inclined to purchase through the mail. Catalog shoppers are extremely cost sensitive. One of AAMD's member art museums reports that "a 5 percent increase in cost to the customer is likely to reduce our sales by at least that much."

The ability of museums to make available scholarly books and reproductions of their collections contributes to a greater understanding and appreciation of art. In some instances, the scholarly materials are sold at a break-even point. To add the burden of tax collection and remittance to these sales could make them unprofitable and could force some institutions to abandon direct mail as a means of disseminating this educational material, thus diminishing a museum's ability to reach out and service a broader audience.

CONCLUSION

If this legislation is enacted, museums could expect to see not only an important revenue source severely diminished because of the resulting loss in sales, but more importantly, to see their ability to fulfill their educational role equally reduced because many museums would have to cut back in their development and distribution of materials about their collections and special exhibitions.

ASSOCIATION OF ART MUSEUM DIRECTORS

MEMBERSHIP LIST

Akron Art Museum, Akron, OH
 Albright-Knox Art Gallery, Buffalo, NY
 Allen Memorial Art Museum, Oberlin, OH
 Allentown Art Museum, Allentown, PA
 American Craft Museum, New York, NY
 Amon Carter Museum, Fort Worth, TX
 Arkansas Arts Center, Little Rock, AR
 Art Gallery of Ontario Toronto, Ontario Canada
 Art Institute of Chicago, Chicago, IL
 Asia Society Galleries, New York, NY
 Asian Art Museum of San Francisco, San Francisco, CA
 Baltimore Museum of Art, Baltimore, MD
 Bass Museum of Art, Miami Beach, FL
 Birmingham Museum of Art, Birmingham, AL
 Boston Institute of Contemporary Art, Boston, MA
 Bowdoin College Museum of Art, Brunswick, ME
 Brandywine River Museum, Chadds Ford, PA
 Bronx Museum of the Arts, Bronx, NY
 Brooklyn Museum, Brooklyn, NY
 Buffalo Bill Historical Center, Cody, WY
 Butler Institute of American Art, Youngstown, OH
 California State University Art Museum, Long Beach, CA
 Canadian Centre for Architecture Montreal, Quebec Canada
 Carnegie Museum of Art, Pittsburgh, PA
 Cedar Rapids Museum of Art, Cedar Rapids, IA
 Centro Cultural/Arte Contemporaneo Mexico, D.F., Mexico
 Chrysler Museum, Norfolk, VA
 Cincinnati Art Museum, Cincinnati, OH
 Clark Art Institute, Williamstown, MA
 Cleveland Museum of Art, Cleveland, OH
 Colonial Williamsburg Foundation, Williamsburg, VA
 Cooper Hewitt Museum, New York, NY
 Corcoran Gallery of Art, Washington, DC
 Cranbrook Academy of Art Museum, Bloomfield Hills, MI
 Crocker Art Museum, Sacramento, CA
 Currier Gallery of Art, Manchester, NH
 Dallas Museum of Art, Dallas, TX
 Dayton Art Institute, Dayton, OH
 DeCordova Museum and Sculpture Park, Lincoln, MA
 Delaware Art Museum, Wilmington, DE
 Denver Art Museum, Denver, CO
 Des Moines Art Center, Des Moines, IA
 Detroit Institute of Arts, Detroit, MI
 Dia Center for the Arts, New York, NY
 Dixon Gallery and Gardens, Memphis, TN
 Elvehjem Museum of Art, Madison, WI
 Everson Museum of Art, Syracuse, NY
 Fine Arts Museums of San Francisco, San Francisco, CA
 Flint Institute of Arts, Flint, MI
 Fort Lauderdale Museum of Art, Fort Lauderdale, FL
 Frederick R. Weisman Art Museum, Minneapolis, MN
 Freer Gallery of Art & Sackler Gallery, Washington, DC
 Frick Collection, New York, NY
 Georgia Museum of Art, Athens, GA
 Gilcrease Institute of American Art, Tulsa, OK
 Harvard University Art Museums, Cambridge, MA
 Henry Art Gallery, Seattle, WA
 Herbert F. Johnson Museum of Art, Ithaca, NY
 High Museum of Art, Atlanta, GA
 Hirshhorn Museum and Sculpture Garden, Washington, DC
 Honolulu Academy of Arts, Honolulu, HI
 Hood Museum of Art, Hanover, NH
 Houston Museum of Fine Arts, Houston, TX
 Huntington Library and Art Gallery, San Marino, CA

Indiana University Art Museum, Bloomington, IN
 Indianapolis Museum of Art, Indianapolis, IN
 International Center of Photography, New York, NY
 International Museum of Photography, Rochester, NY
 Isabella Stewart Gardner Museum, Boston, MA
 J. Paul Getty Museum, Santa Monica, CA
 J.B. Speed Art Museum, Louisville, KY
 Jane Voorhees Zimmerli Art Museum, New Brunswick, NJ
 Jewish Museum, New York, NY
 Joslyn Art Museum, Omaha, NE
 Kimbell Art Museum, Fort Worth, TX
 Long Beach Museum of Art, Long Beach, CA
 Lowe Art Museum, Coral Gables, FL
 Marion Koogler McNay Art Museum, San Antonio, TX
 McMichael Canadian Art Collection, Kleinburg, Ontario Canada
 Memorial Art Gallery of Rochester, Rochester, NY
 Memphis Brooks Museum of Art, Memphis, TN
 Metropolitan Museum of Art, New York, NY
 Michael C. Carlos Museum, Atlanta, GA
 Milwaukee Art Museum, Milwaukee, WI
 Minneapolis Institute of Arts, Minneapolis, MN
 Mint Museum of Art, Charlotte, NC
 Modern Art Museum of Fort Worth, Fort Worth, TX
 Montclair Art Museum, Montclair, NJ
 Montreal Museum of Fine Arts, Montreal, Quebec Canada
 Munson-Williams-Proctor Museum of Art, Utica, NY
 Museo de Arte Contemporaneo de Monterrey, Monterrey, N.L., Mexico
 Museo de Arte de Ponce, Ponce, PR
 Museum for African Art, New York, NY
 Museum of Contemporary Art (Los Angeles), Los Angeles, CA
 Museum of Contemporary Art—Chicago, Chicago, IL
 Museum of Contemporary Art—San Diego, La Jolla, CA
 Museum of Modern Art, New York, NY
 National Gallery of Art, Washington, DC
 National Gallery of Canada, Ottawa, Ontario Canada
 National Museum of African Art, Washington, DC
 National Museum of American Art, Washington, DC
 National Portrait Gallery, Washington, DC
 Nelson-Atkins Museum of Art, Kansas City, MO
 Neuberger Museum of Art, Purchase, NY
 New Museum of Contemporary Art, New York, NY
 New Orleans Museum of Art, New Orleans, LA
 Newark Museum, Newark, NJ
 Newport Harbor Art Museum, Newport Beach, CA
 Norton Gallery & School of Art, West Palm Beach, FL
 Oakland Museum, Oakland, CA
 Orlando Museum of Art, Orlando, FL
 Palm Springs Desert Museum, Palm Springs, CA
 Parrish Art Museum, Southampton, NY
 Pennsylvania Academy of the Fine Arts, Philadelphia, PA
 Philadelphia Museum of Art, Philadelphia, PA
 Philbrook Museum of Art, Tulsa, OK
 Phillips Collection, Washington, DC
 Phoenix Art Museum, Phoenix, AZ
 Pierpont Morgan Library, New York, NY
 Princeton Art Museum, Princeton, NJ
 Ringling Museum of Art, Sarasota, FL
 Royal Ontario Museum, Toronto, Ontario Canada
 Saint Louis Art Museum, St. Louis, MO
 Samuel P. Harn Museum of Art, Gainesville, FL
 San Antonio Museum of Art, San Antonio, TX
 San Diego Museum of Art, San Diego, CA
 San Francisco Museum of Modern Art, San Francisco, CA
 Santa Barbara Museum of Art, Santa Barbara, CA
 Seattle Art Museum, Seattle, WA
 Sheldon Memorial Art Gallery, Lincoln, NE
 Smith College Museum of Art, Northampton, MA
 Snite Museum of Art, Notre Dame, IN

Solomon R. Guggenheim Museum, New York, NY
 Spencer Museum of Art, Lawrence, KS
 Springfield Museum of Fine Arts, Springfield, MA
 St. Petersburg Museum of Fine Arts, St. Petersburg, FL
 Studio Museum in Harlem, New York, NY
 Tampa Museum of Art, Tampa, FL
 Telfair Academy of Arts and Sciences, Savannah, GA
 Textile Museum, Washington, DC
 The Mexican Museum, San Francisco, CA
 Toledo Museum of Art, Toledo, OH
 University Art Museum-Berkeley, Berkeley, CA
 University of Iowa Museum of Art, Iowa City, IA
 University of Michigan Museum of Art, Ann Arbor, MI
 Utah Museum of Fine Arts, Salt Lake City, UT
 Vancouver Art Gallery, Vancouver, B.C. Canada
 Virginia Museum of Fine Arts, Richmond, VA
 Wadsworth Atheneum, Hartford, CT
 Walker Art Center, Minneapolis, MN
 Whitney Museum of American Art, New York, NY
 Wichita Art Museum, Wichita, KS
 Wight Art Gallery, UCLA, Los Angeles, CA
 Williams College Museum of Art, Williamstown, MA
 Winterthur Museum and Gardens, Winterthur, DE
 Worcester Art Museum, Worcester, MA
 Yale University Art Gallery, New Haven, CT

PREPARED STATEMENT OF REBECCA MACCARDINI, REPRESENTING THE INTERNATIONAL COUNCIL OF SHOPPING CENTERS

I. INTRODUCTION

Mr. Chairman, good morning. My name is Rebecca Maccardini, and I am Director of Operations for Forbes-Cohen Properties in Southfield, MI. Forbes-Cohen is a commercial properties company which specializes in shopping center development and management. I am also President of the International Council of Shopping Centers (ICSC), the trade association of the shopping center industry. I am pleased to have the opportunity to present this statement to the Committee in support of S. 1825, "The Tax Fairness for Main Street Business Act", and to illustrate to the Committee the importance the retail and development sectors of the shopping center industry place on the provisions contained in this legislation and why their passage is critical to the future stability and future growth of the traditional retail market.

First, let me describe ICSC. As the trade association of the shopping center industry, ICSC's membership of over 24,000 individuals encompasses owners, developers, retailers, lessors, brokers, financiers, and all others involved in some aspect of the shopping center industry. ICSC holds over 200 educational meetings every year for its members and publishes a variety of educational materials including an industry magazine and a quarterly legislative report.

Second, a word about the industry. Shopping centers are the backbone of the retail economy generating \$32 billion of state sales tax revenue in 1993 and employing nearly 10 million Americans, or 1 of every 9 non-farm workers. Although many people acquaint the words "shopping center" with the large retail malls, it is important to note that most shopping centers are modest community and neighborhood centers. In fact, nearly 65 percent of the shopping centers in the United States occupy less than 100,000 square feet and typically consist of just a few stores. These are the centers most frequented by consumers. Nearly 90 percent of the adult population shops regularly in these small centers—some as often as six or seven times per month.¹

Competition in the retail marketplace has always been intense. Retailers, both large and small, must employ bold marketing strategies to capture consumer attention and sales dollars. These marketing campaigns cost retailers thousands, and in some cases millions, of dollars annually. But this is one of the costs of doing business, and in order to remain competitive retailers often will "pull out all the stops" to make these campaigns effective.

Although fervent competition between traditional retailers in many ways serves to strengthen the marketplace for both the retailer and the consumer, the traditional retailer faces a threat of unfair competition which may ultimately inflict irreparable damage to the marketplace, impact employment in the industry and cause a decline in tax revenues available to states and localities to fund essential services.

II. THE PROBLEM

Traditional retailers collect state and local sales taxes on all sales and remit the sales taxes collected to the appropriate state and local revenue agencies. Most retailers perform this service without giving the process a second thought—they consider this collection and remittance process to be a normal part of doing business and also realize that these sales taxes play an important role in financing important state and local services on which they rely. However, direct marketing companies are not required to collect and remit sales taxes on consumer purchases to states where they do not have a physical presence. This loophole in the tax laws allows them to sell their merchandise “tax free” to consumers around the country—making the final purchase price on these goods substantially less than the same goods found in local retail stores where taxes are added to the final price.

However, the words “tax free” are misleading. In actuality, merchandise purchased from a direct marketing is not tax free. Although the direct marketing company is not required to collect sales taxes on each sale, the consumer is, by law in 45 states, required to pay a use tax on these purchases. Most consumers do not pay this tax, and, in fact, few are aware of the requirement to do so. In addition, few states enforce use tax laws because of the difficulty in obtaining direct marketing information regarding consumer purchases.

III. THE IMPACT

What impact does this “tax free” pricing advantage accorded to direct marketing companies have on traditional merchants? To accurately assess the impact on the retail industry, employment and the economy, one must examine multiple aspects which converge on the central issue.

A. The Marketplace

As the retail industry moves toward the 21st century, dramatic changes are taking place in the marketplace. Since the dawn of the retail era, “shopping” has been most closely associated with a visit to the local store. However, technology is entering the retail marketplace, and the definition of “shopping” is rapidly changing. With the advent of expanded use of catalog merchandising and video shopping services, consumers are taking advantage of the luxury of shopping from the comfort of their own home in lieu of patronizing their traditional hometown merchants. This new segment of the retail market has had a dramatic effect on the overall scope of the market.

The following points illustrate the dramatic changes in the marketplace:

- In the past several years, the annual increase in retail sales in shopping centers has remained relatively steady at under 5 percent,¹ while the same figures for the direct marketing industry show a more dramatic increase—up 14 percent from 1992 to 1993 (from \$205.5 billion to \$234.2 billion).² Direct Marketing Association data indicates that 1992 catalog sales were \$51.5 billion, culminating an average growth rate of nearly 8 percent since 1987.²
- Industry analysts state that over the next several years in-store sales are expected to grow barely enough to keep pace with inflation, while catalog sales are expected to increase at nearly twice that rate. The Direct Marketing Association expects an average annual growth rate of 6.6 percent through 1996, for total sales revenue of \$66.4 billion for this segment of the market.²
- Additional sources for “tax-free” shopping are rapidly becoming available to consumers. Interactive television, online computer services, and electronic shopping for airline passengers are just a few examples of direct marketing services which stand to grab a greater share of the traditional retail market in the next decade.

While traditional retailers constantly refocus their marketing strategies to adapt and compete in the changing marketplace, one aspect they are unable to alter is the tax avoidance advantage accorded their direct marketing counterparts. But this situation affects more than the retail marketplace.

B. State and Local Economies

State and local economies depend on revenues generated from sales taxes—particularly those taxes generated by the Nation’s shopping centers. In 1993, retail sales in shopping centers reached \$830.2 billion and generated \$30.8 billion in state sales tax revenue.¹ As stated previously, sales in direct marketing industry for this same period reached \$234.2 billion—or roughly one-third of retail sales in shopping centers nationwide. But, unfortunately for state and local economies, the majority of these direct marketing sales remitted no sales tax revenues except in those jurisdictions in which they are located.

The tremendous growth of the direct marketing industry versus the relatively moderate growth of the shopping center industry will have a negative impact on

property tax receipts as well. The value of retail leases in shopping centers are based primarily on retail sales revenue. If retail sales in shopping centers fail to keep pace with the rate of inflation (due in large part to increased marketshare of the direct marketing companies), the value of the leases for these retail properties decline. And, as the value of these properties decline, so, potentially, does the assessed valuation of the property, leading to a subsequent decline in the amount of property tax revenues generated from these properties for use by state and local governments.

C. Employment

Approximately 10 million people in the United States are employed in shopping centers, equal to about 1 of every 9 non-farm workers. In addition, approximately 43,000 construction jobs are supported by the construction of new centers or the renovation of existing centers.¹ It is important to note that retail employment is directly tied to retail sales revenue, and therefore, any diminishment in the size of the traditional retail market will have a corresponding negative impact on retail employment.

Yes, it is true that growth in the direct marketing industry versus a decline in the traditional retail market should result in additional employment in the direct marketing industry. However, while current employment statistics for the direct marketing industry are a closely guarded secret, it is well-known that this segment of the industry is less labor-intensive than the traditional retail sector, and, therefore, any increase in employment in the direct marketing industry may not match a corresponding decrease in traditional retail employment.

D. Environment

By placing a greater focus on how business entities take responsibility for managing the environment in which they operate, federal, state and local governments work in concert with business to adopt and enforce laws and regulations to protect the environment while allowing business to operate efficiently and prosper. However, these laws and regulations exact a price—and that price consists of taxes and fees levied in the form of property taxes, environmental impact fees, and other fees which most businesses pay for the privilege of doing business in a particular region.

Why do these taxes apply to "most" businesses and not "all" businesses? Because of the very loophole in the tax laws that S. 1825 will close, direct marketing companies that do not have a physical presence in a particular state escape payment of the taxes and fees levied against traditional retail businesses who operate in that state. However, even though they do not have a physical presence, these same direct marketing companies do have a market in that state. Annually, semi-annually, monthly, and sometimes weekly, they mail catalogs and ship merchandise to customers in that state. They beam their video shopping services to these customers via cable television, and they advertise their services through use of computer modems. In doing so, these direct marketing companies take advantage of highways to ship their goods, banks to carryout their sales transactions, and courts to handle their legal affairs. And their customers use state and municipal landfills to dispose of catalogs and packing materials. The direct marketing companies use these services, in large part, "free-of-charge"—and remit little or no monies for their construction or maintenance.

Let's examine the impact of just one of these "free-of-charge" services. One of the most pressing environmental problems currently facing the state and local governments is the disposal of thousands of tons of recyclable and nonrecyclable waste. Governments exact a variety of fees upon traditional retail establishments for waste disposal. Recycling is the name of the game in many states and localities, but this does not seem to apply to all businesses. By their own admission, less than one-half of catalog companies print their catalogs on recyclable paper, and just slightly more use recyclable paper for their promotional pieces and order forms.³ The result is that hundreds of thousands of tons of nonrecyclable catalogs and shipping material from direct marketing companies are deposited annually in landfills across the country—and the direct marketing companies responsible for this waste have little or no monetary responsibility for their disposal. And while environmental concerns rank as one of the most pressing issues for traditional businesses, a recent survey of catalog executives that the environment failed to make a "Top Ten" list of critical issues facing catalogs.⁴

IV. SUMMARY

I applaud you, Mr. Chairman, for introducing S. 1825, "The Tax Fairness for Main Street Business Act". S. 1825 is a step in the right direction to correct the tax-avoidance inequity in the retail marketplace. S. 1825 would not give traditional retailers an advantage over direct marketing companies—it would simply apply the tax laws

equally to all retail companies, and shift the burden of compliance from the consumer to the retail business.

However, as illustrated in this statement, passage of this legislation serves purposes far more reaching than tax equity. The potential for retail marketplace domination by the direct marketing industry over the traditional retailer could have negative effects on the employment, the environment, and the state and local economies which depend on a strong retail industry. These negative effects far outweigh the need for future subsidization of the direct marketing industry.

I thank the Committee for the opportunity to present these views on behalf of the ICSC.

NOTE:

¹The Scope of the Shopping Center Industry in the United States, 1993-1994. The International Council of Shopping Centers, 1993.

¹The Scope of the Shopping Center Industry in the United States, 1993-1994. The International Council of Shopping Centers, 1993.

¹The Scope of the Shopping Center Industry in the United States, 1993-1994. The International Council of Shopping Centers, 1993.

¹The Scope of the Shopping Center Industry in the United States, 1993-1994. The International Council of Shopping Centers, 1993.

²"Profits Due", Entrepreneur magazine, February 1994.

²"Profits Due", Entrepreneur magazine, February 1994.

²"Profits Due", Entrepreneur magazine, February 1994.

³1993 Direct Marketing Association's Statistical Fact Book, Direct Marketing Association, Inc. 1993.

⁴Source: Catalog Age, The Catalog Age Report, 1992.

The Law Offices of
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Tel: (703) 533-9660
Fax: (703) 533-7714

April 8, 1994

Sen. Dale Bumpers
United States Senate
229 Darken Senate Office Building
Washington, D.C. 20510-0401

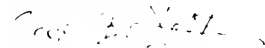
Senator Bumpers:

Enclosed is the testimony of the Incentive Federation, Inc. opposing the enactment of S.1825, the "Tax Fairness for Main Street Business Act."

The Incentive Federation is dedicated to the promotion of productivity in the work place. The member companies of the Incentive Federation consist of almost every important consumer goods manufacturer. These companies market incentive awards and programs to major corporations for use as a means of encouraging employees to become more productive and efficient. While incentive programs take many forms and depend on the nature of the businesses involved, they share one common goal: improving the performance and productivity of the companies involved.

The proposed bill would harm all businesses, but especially mail order businesses that enrich the marketplace by providing greater choice to consumers. This unfair, inefficient, and costly means of tax collection would harm not just businesses, but their customers as well by making merchandise more expensive. As a result, the Incentive Federation hopes that you will reconsider your support for the bill.

Sincerely,



George B. Delta

INCENTIVE FEDERATION, INC.

Testimony Regarding S. 1825
"Tax Fairness for Main Street Business Act"

S.1825 proposes to give states the authority to require direct marketers to collect use tax on purchases by customers in states where the marketers have no physical presence, receive no direct benefits, and cannot participate in the political process. On behalf of the Incentive Federation, which represents thousands of businesses, we urge you not to enact S.1825. This bill would threaten the very existence of businesses that enrich the marketplace by providing greater choice to consumers and would seriously damage many industry suppliers.

If S.1825 is enacted, national marketers, most of which are small businesses, would be forced to bear the burden of collecting sales and use taxes for 45 states and the District of Columbia based on over 6,000 different rates and 46 sets of exemptions and compliance rules. As a result, companies that sell to consumers in every state would have to prepare and file hundreds of sales and use tax returns each month. In addition, these small companies would be subject to time-consuming and expensive sales and use tax audits by the various states.

The bill's provision allowing businesses to collect taxes according to an average local tax rate is unfair. Consumers should not be required to pay more taxes than they owe, and businesses should not be forced to make them do so. Similarly, computer systems that can handle tax collection are too expensive for small

and mid-size firms above the \$3,000,000 sales threshold proposed by S.1825 and do not handle the costs incurred from communicating tax instructions to customers and the customers' failure to pay sales or use tax. The compliance costs alone for direct marketers would be more than six times that of local retailers who need concern themselves with only one tax rate and one set of exemptions.

S.1825 will undoubtedly result in a dramatic loss in sales. Customers will find it too complex to place orders, mail order houses will lose valuable catalog advertising space to information about taxes and exemptions, and prices charged will necessarily be higher. The bill would not only result in higher prices, but also in decreased services and fewer choices for consumers. For the many consumers, such as the elderly, the disabled, working parents, single parents, rural families, and others who rely on mail order shopping for access to products necessary for everyday life, the bill would severely limit their options and complicate their lives.

The adverse effect of the proposed legislation will not be limited to direct marketers and to consumers. The ripple effects will also harm businesses that support the direct marketing industry such as printers, list brokers, paper manufacturers, advertising agencies, transportation companies, service bureaus, and so forth.

Finally, the revenues projected to be collected by states appear to be overstated. Such estimates assume no drop in mail order sales and do not reflect the fact that states already collect

taxes from direct marketers with a physical presence in a state. Moreover, these estimates do not take into account the lost sales and income tax revenues that would result from the collateral effects of the bill on the suppliers of marketing companies and on the other businesses that support marketing companies.

Most mail order companies are small businesses of the kind that have fueled our economic recovery by demonstrating the entrepreneurial spirit in these uncertain times. These companies enrich the marketplace by providing greater choice and convenience to consumers. The burden of a national tax collection system created by S.1825, a system that is unsuited to the national marketplace, would fall disproportionately on small businesses that are the least able to bear the costs of such a burden.

The harmful effects of this bill are not limited to small businesses, however. The bill would enact an unfair, inefficient, and unnecessary method for collecting tax revenue that would hurt all direct marketers, consumers, and businesses that support the marketing industry. Accordingly, we urge you not to harm the marketing industry and its consumers by enacting S.1825.



GOVERNMENT FINANCE
OFFICERS ASSOCIATION

1750 K Street, N.W., Suite 650, Washington, DC 20006
202/429-2750 • Fax 202/429-2755

April 12, 1994

Honorable Dale Bumpers
Chairman
Committee on Small Business
United States Senate
SR-428A Russell Senate Office Building
Washington, DC 20510

Dear Chairman Bumpers:

On behalf of the Government Finance Officers Association (GFOA), I am writing to indicate our support for S. 1825, the Tax Fairness for Main Street Act of 1994, which you have introduced. As you know, GFOA is a professional association representing almost 13,000 state and local public finance professionals and has worked closely with the coalition of business, labor and other state and local government groups in support of your legislation.

This legislation, which would allow states to require that out-of-state companies collect and remit sales and use taxes on merchandise sold and shipped to residents of that state, will help ensure equal treatment for our local merchants. These merchants not only collect these taxes but pay taxes themselves, provide employment opportunities to our citizens, and contribute in numerous ways to the well-being of our communities.

Sales by out-of-state firms are already subject to state and local sales and use taxes, but state and local governments have so far been unable to compel these firms to collect and remit such taxes. Our inability to do so has cost our jurisdictions \$3 to \$4 billion a year in uncollected revenue that would otherwise go for public service and educational needs.

We thank you for your leadership role in introducing this legislation and in holding hearings on this issue of great importance to state and local governments.

Sincerely,

Betsy Dotson, Esq.
Assistant Director
Federal Liaison Center

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TELECOMMUNICATIONS
ENGINEER
CHARLES F. TURNER

WRITERS DIRECT DIAL NUMBER

April 7, 1994

(202) 434-4137

Senator Dale Bumpers, Chair
Senate Small Business Committee
U.S. Senate
Room 428-A, Russell Building
Washington, D.C. 20510

Dear Senator Bumpers:

This letter expresses the views of our client -- the Promotional Products Association International -- on S. 1825, the bill which would permit states to require interstate sellers to collect and remit sales taxes. We ask that the letter be inserted in the record of the hearings on this measure.

The Promotional Products Association International (PPAI) is a trade association of 5500 companies that either manufacture or sell promotional products. Such products consist of items that are imprinted with an advertising message (called specialty advertising), business gifts and other products which are distributed without charge for promotional purposes. Virtually all PPAI members and members of the promotional products industry are small business firms.

The impression may have been created that S. 1825 principally affects large mail order sellers such as L.L. Bean and that opposition to the measure comes mainly from such companies. We wish to correct any such misimpression. The bill will hurt thousands of small businesses, many of which are in the promotional products industry. Some PPAI members engage in mail order sales to other businesses by catalogue. But many more, perhaps several thousand, frequently ship their products to buyers in other states where they have no offices or salespersons. Many such companies have sales barely in excess of \$3 million, the monetary jurisdictional limit contained in S. 1825.

Even in this computer age, it would be extremely burdensome and costly for such firms to collect and remit taxes according to the various rates of as many as 46 states and 6500 local

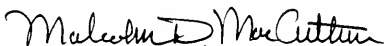
Senator Dale Bumpers, Chair
April 7, 1994
Page 2

KELLER AND HECKMAN

jurisdictions. Doing that might be feasible for large interstate shippers, but it is not for firms in our client's industry.

For this reason PPAI strongly opposes enactment of S. 1825. We would be happy to supply any additional information about our client's views in this respect.

Sincerely yours,

A handwritten signature in cursive script, reading "Malcolm D. MacArthur".

Malcolm D. MacArthur
General Counsel
Promotional Products Assn. Intl.

cc: H. Ted Olson, President
Promotional Products Assn. Intl.
3125 Skyway Circle North
Irving, Texas 75038

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Executive Director

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444 North Capitol Street
Washington, D.C. 20004-1512
Telephone (202) 624-5300



April 8, 1994

The Honorable Dale L. Bumpers
Chairman
Senate Committee on Small Business
SR-428A Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Bumpers:

The National Governors' Association strongly supports your legislation calling for "Tax Fairness for Main Street Business." It is nearly identical to NGA policy.

The Supreme Court has made it clear that this is now a congressional issue. Therefore, we hope that Congress will take quick action to permit states to require out-of-state firms to collect already-due state and local sales taxes. Your legislation is fair to interstate firms, is easy to administer, and is especially fair to small business.

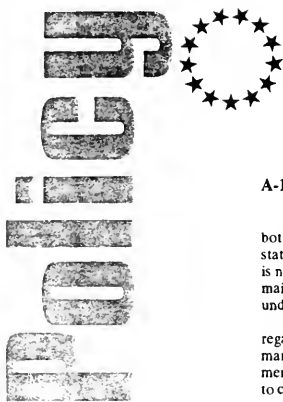
The time is long overdue for Congress to protect small business from the unfair and unequal competition of out-of-state firms.

Thank you for your leadership on behalf of small business.

Sincerely,

Governor Carroll A. Campbell Jr.

Attachment



A-12. OUT-OF-STATE SALES TAX COLLECTIONS

The National Governors' Association supports state efforts to pursue, through both the courts and federal legislation, provisions that would require large out-of-state mail order firms to collect sales and use taxes from their customers. Such action is necessary to restore fairness to competition between community and out-of-state mail transactions and to provide a means for the states to collect taxes that are owed under existing law.

Recent court cases--in particular, the North Dakota Supreme Court's decision regarding the Quill Corporation--have acknowledged the dramatic changes in direct marketing over the past twenty-four years by requiring that certain mail-order merchants collect a state's sales tax from its customers. The Governors call on states to continue their efforts to restore equity to the tax system by pursuing court action.

Federal legislation should conform to the following principles:

- Apply to only large firms with national or single state sales of tangible personal property in excess of reasonable de minimus levels nationally and in each state;
- Apply to firms engaged in regular, systematic solicitation of sales in a state;
- Be imposed only when the state has established a uniform rate for the state, including any minimum, statewide, local sales tax rates;
- Include reasonable return and remittance requirements of not more than quarterly;
- Apply the tax to the sale or use of tangible personal property.

The Governors call upon Congress to exercise its powers to regulate interstate commerce to grant the states authority to collect their own tax owed on these interstate mail transactions. Such action would restore fairness to competition between community and out-of-state mail transactions and provide a means for the states to collect already-owed taxes.

Adopted July 1987; revised August 1991.

Performance Warehouse Association

21311 Hawthorne Boulevard, Suite 103
 Torrance, California 90503
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 (310) 543-9623 Fax

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 So Performance Warehouse
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 Executive Director

Caterina Schutt
 Executive Assistant

Robin Villacorta
 PAR Coordinator

* **Executive Committee**

March 24, 1994

Small Business Committee
 The Honorable Dale Bumpers
 United States Senate
 229 Dirksen Senate Office Building
 Washington, DC 20510

Dear Senator Bumpers:

The attached letter has been sent to each member of the Small Business Committee and I would ask that you please add this letter and the attachments (as you see fit) to the hearing records.

Thank you for your efforts.

Sincerely,

John M. Towle
 John M. Towle
 Executive Director

Attachments

cc: Don Smith, President of PWA
 PWA Board of Directors

JMT:cat

MOTAX SMLBU'S.LTR

Page 2 of 2

This collection of a sales/use tax is "fair", our states need the revenue! Uncollected sales/use tax is money left sitting on the table. And it only rews those who are taking advantage of a "loop hole".

In closing, on behalf of the Performance Warehouse Association and it's retail members throughout the United States, I urge you to support Senator Bumpers' Bill S.1825.

This bill is essential for the survival of the Performance Automotive Retailers, and millions of main street retailers across this nation.

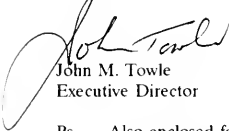
The main street retailers need your support now or they will continue to close their doors. At which time, their state loses state and local tax revenue and unemployment costs go up. This is truly a loose, loose situation.

We need to level the playing field NOW!

The fair collection of a use tax will greatly help millions of retailers to stay in business. Keeping people working should be on the top of everyone's agenda...keeping our main street retailers working is a win, win result of passing Bill S.1825.

Thank you for taking your valuable time to read this letter and thank you in advance for your support of S.1825.

Sincerely,



John M. Towle
Executive Director

Ps. Also enclosed for your review, please find some additional correspondence from the Performance Warehouse Association.

cc: Don Smith, President of PWA
PWA Board of Directors

Larry's Lighthouse Marina Inc.

February 17, 1994

The Honorable Senator Bumpers
Chairman, Committee on Small Business
SR428A
Russell Senate Office Building
Washington, DC 20510-6350

Attention: Mr. Stan Fendley, Tax Counsel

Dear Senator Bumpers:

The passage of legislation mandating all direct mail order companies to collect and remit local and state sales taxes is long overdue.

This "loophole" in the sales tax regulations is costing local municipalities millions in lost revenues. Furthermore, this "loophole" creates an economic hardship for the local small businesses. The local businesses are competing with the direct mail order companies and are at an immediate price disadvantage because local businesses must collect sales tax on the goods sold, hence, raising the cost of goods substantially to the consumer. To aggravate the situation, local county (as well as city and state) legislators further compound the problem by increasing the percentage of the sales tax in an effort to increase sales tax revenues.

I have enclosed an ad of a competitor of ours from North Carolina. We believe in competition and fair play, however, please notice that in their advertisement (in a New York magazine) the large bold print "No Sales Tax Added Outside of North Carolina." This puts us at an unfair disadvantage of being 8-1/2% more costly to the consumer. Immediate legislation will correct this unfair advantage that direct mail order companies presently enjoy and will result in a dramatic increase in sales tax revenues. The ultimate scenario will hopefully be a roll back in the percentage of sales tax levied (because of the new revenue generated) which will please all constituents.

Sincerely,



Clete Galasso
Vice President

CG:sg
enc.

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PRINTING INDUSTRIES OF AMERICA, INC.

100 Daingerfield Road
Alexandria, Virginia 22314
(703) 519-8158

Government Affairs
Department

April 8, 1994

The Honorable Dale Bumpers
Chairman, Senate Small Business Committee
Senate Russell Building, Room 428A
Washington, DC 20510-6350

Dear Senator Bumpers:

On behalf of the more than 14,000 members of Printing Industries of America, Inc., I would like to voice our strong opposition to S. 1825, the "Fairness for Main Street Business Act of 1994." While the apparent goal of this legislation is fairness for America's main street small businesses, the result of this legislation will be distinctly unfair for America's printing industry.

The U.S. printing industry is truly a main street small business and one of the largest small business sectors in our nation with more than 42,000 firms. These firms on average employ less than twenty employees and have annual sales of approximately \$1 million. The U.S. printing industry is at the very core of the direct marketing industry by supplying printed materials for catalogs, advertisements, direct mail pieces, magazines, journals and business forms.

Printed products used in the direct marketing industry represent \$14.9 billion in annual sales. If this legislation is enacted and national marketing firms are required to collect sales and use tax in every state regardless of whether they have a physical presence such as a retail store there will be serious consequences for the U.S. printing industry:

- total printing sales will be reduced by \$1.49 billion;
- an estimated 15,000 printing employees will lose their jobs;
- the loss of those jobs will cost an estimated \$6.1 billion in payroll;
- most effected states include California, Ohio, Minnesota, New York, Michigan, Illinois, Wisconsin, Missouri, Texas, and Florida;
- in addition to the aforementioned states, it is important to note that the production of printed materials used by direct marketing firms are spread out among forty-five states.

The printing firm of the 1990's is much different than those of the past. Printing firms are leaner, more efficient, high-tech oriented, and increasingly environmentally sound operations. The employees of printing firms range from skilled craft workers, high-tech computer personnel, managerial/sales positions, and perhaps the most important in today's economy the entry level



worker with opportunity for advancement. The passage of this type of national sales tax legislation represents an economic decision to either continue the growth of the direct marketing service sector and its suppliers such as printers or create a financial drag on the entire industry and displace workers

The revenue estimates concerning S. 1825 cite approximately \$3 billion in revenues to be generated compared to a recent study by Nathan and Associates, a leading economic research firm, that estimates at approximately \$1.3 billion in revenues. Regardless of which estimate is truly accurate, the net effect of the legislation will certainly reduce corporate income and payroll tax receipts

We hope that you will recognize that the "Fairness for Main Street Business Act of 1994" will do far more harm than good to the many small businesses such as printers that contribute to the direct marketing industry. We urge your committee to oppose this legislation

Sincerely,



Benjamin Y. Cooper
Senior Vice President
Government/ Public Affairs



PRINTING INDUSTRIES OF AMERICA, INC.

100 Daingerfield Road
Alexandria, Virginia 22314
(703) 519-8158

Government Affairs
Department

April 8, 1994

Laura Lecky
Hearing Clerk
Senate Small Business Committee
Senate Russell Building, Room 428A
Washington, DC 20510-6350

Dear Ms. Lecky:

Please include the enclosed letter on behalf of Printing Industries of America, Inc. for the record of the hearing to be held on April 13, 1994 concerning S. 1825, "Fairness for Main Street Business Act of 1994 "

If you have questions concerning the enclosed letter, please do not hesitate to call me at 703/519-8180.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Alex Graham'.

Alexander I. Graham
Assistant Director of Political Affairs



STATEMENT OF JOYCE MALONEY

April 13, 1994 Hearing
of the

Senate Small Business Committee
on S. 1825

"The Tax Fairness for Main Street Business Act of 1994"

Mr. Chairman, good morning. My name is Joyce Maloney, and I am a resident of Bonita Springs, Florida and Naperville, Illinois. I am pleased to have the opportunity as a private citizen to present this statement to the Committee and appreciate Sen. Bumpers' efforts in introducing S. 1825 and the Committee's efforts in examining the problems associated with retail companies who do not collect sales tax on interstate sales.

The purpose of my statement is to illustrate to the Committee a situation faced by my husband and me in purchasing furniture to decorate our recently purchased home. My husband, Dale, and I recently purchased a condominium in Bonita Springs, Florida. (We also maintain a residence in Naperville, Illinois.) In conversations with friends, many pointed out to us that a trip to the North Carolina furniture outlets would be in order as we needed to purchase many items to furnish the new condominium. After some research, my husband and I made the trip to North Carolina and were extremely happy not only with the wide selection of merchandise available but also with the prices quoted.

After much searching, we selected a number of items to purchase in one particular furniture gallery and signed a purchase contract with the sales agent. During his "sales pitch" to us, the sales agent stated that since the furniture was to be delivered to our home in Florida that no sales tax was to be applied to the sale. And besides, as he told us, "the delivery charge you are paying will offset the sales tax."

My husband and I returned to our home in Florida, and approximately 10 weeks after purchasing our furniture in North Carolina several of the pieces were delivered to our home in Florida. After inspecting each piece, I signed the delivery invoice and the furniture was ours. However, the biggest surprise was yet to come.

Approximately 8 weeks after taking delivery of the first pieces of furniture, we received an invoice for \$226.26 from the Florida Department of Revenue for payment of Florida sales tax on the furniture recently delivered to our home. (Sales tax was also calculated on the freight charges for delivering the furniture.) It seems that the driver who delivered our furniture stopped at the highway weigh station upon entering the State of Florida (as he is required to do). The official at the weigh station noted that the invoice for our furniture did not indicate that we had paid Florida sales tax on the shipment, so he promptly made a photocopy of the invoice and forwarded it to the Florida Department of Revenue who then forwarded a tax bill to us.

I find this situation very confusing and misleading. As I mentioned previously, the sales agent in North Carolina stated that no sales tax was to be added on to the sales contract. Although he indicated that he was not required to collect the sales tax, he did not indicate to me that I was

required to pay sales tax on these purchases to the State of Florida. I also find misleading his statement that the delivery charge will offset the sales tax, because, in actuality, the delivery charge did not offset anything, and, in fact, I was assessed sales tax on the delivery charge.

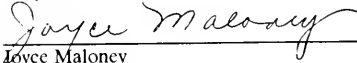
And, finally, had I been aware of the trouble I would be going through in purchasing this furniture, my husband and I would have saved ourselves a lot of anguish and just bought furniture in the State of Florida!

Mr. Chairman, my husband and I are law-abiding citizens who faithfully pay our taxes as required by the government. Although we are sometimes dismayed by the amount of taxes we are required to pay, we are aware that these taxes fund important things in our lives -- like schools for our children, police and fire protection, and other services we rely on daily. We shop for groceries, clothing, and other items in stores in both Florida and Illinois and pay the sales tax on these purchases without giving a second thought. Yes, I thought it was unusual that we were told that sales tax did not have to be applied on our furniture purchases, but what I found more disturbing was the fact that the sales agent conveniently failed to mention that it was our obligation, not his, to pay the tax to the State of Florida. Receiving this invoice from the Department of Revenue reflected upon us that we had done something wrong, when in reality we were just the victims of a lack of correct information.

And, as an aside, we did not receive all the furniture we ordered in the first shipment because several pieces had to be ordered from the factory. The driver who delivered the additional pieces of furniture was obviously aware of what would occur once he stopped at the weigh station at the Florida border because he stated that sometimes customers offer to "make a deal" if he "took care of" the shipping invoice for our furniture.

Mr. Chairman and Members of the Committee, it is time to correct this situation and bring about truth in the marketplace. As I stated above, I have no problem in paying sales tax that is due on any purchase I make. But what I despise is receiving inaccurate (and fraudulent) information regarding my obligations to remit sales tax. It is time to shift the sales tax remittance burden from the consumer to the retail company -- so that everyone plays, and pays, by the same rules.

Respectfully submitted:



Joyce Maloney
27031 Lake Harbor Court
#201
Bonita Springs, Florida 33923
Ph: 813/495-9723
and
1256 Whitingham Circle
Naperville, Illinois 60540
Ph: 708/369-1868

PREPARED STATEMENT OF WILLIAM T. POUND, NATIONAL CONFERENCE OF STATE
LEGISLATURES

The National Conference of State Legislatures (NCSL) strongly supports S. 1825, the "Tax Fairness For Mainstreet Business Act of 1994," sponsored by Senator Dale Bumpers.

The Bumpers bill will restore state authority to require compliance with sales and use laws by out-of-state firms. Too many direct marketing firms currently avoid collecting and remitting on their sales thanks to a loophole created by the U.S. Supreme Court's *Bellas Hess* decision. Under the terms of that decision, firms with no physical presence in a state cannot be compelled to collect and remit the taxes that are owed.

Out-of-state sellers who avoid responsibility for collecting sales taxes, simply because they lack a physical presence, currently enjoy an unfair competitive advantage over local merchants. This is the first and most important rationale for the Bumpers bill. The margin of profit in many retail lines is thin. A local merchant, for example, with a 5 percent profit margin will have a difficult time competing with a direct marketer who enjoys a 5 percent price advantage by avoiding sales tax collection responsibilities. Such discriminatory treatment is not only unfair to the local merchant, it is unfair to the community.

Small businesses, particularly retail businesses, are important sources of employment in our communities. Small retail businesses, many of them family owned, are a part of community life. They are involved frequently in a wide variety of activities from the local chamber of commerce to sponsorship of little league teams.

These merchants face increased competition from large direct-marketing corporations, whose massive volume allows them to cut profit margins on some items, whose highly automated operations allow significant savings on labor costs, and whose expensive advertising campaigns and sophisticated marketing operations stimulate consumer demand for their goods.

The direct marketers are to be commended for their success to the extent it has been built on greater efficiency, lower costs, and greater responsiveness to the needs of consumers. The Bumpers bill does not propose to subsidize or protect community retailers. The proposal is simply to halt the implicit subsidization of large direct marketing corporations that flows from the *National Bellas Hess* decision. The Bumpers bill simply provides for fair rules of competition.

Let the direct marketers compete with community retailers, but require them also to meet their community responsibilities by collecting sales taxes. Tax collection avoidance is not an element of fair competition.

Tax collection avoidance also reduces revenues available for state and local government programs. This is a second important reason for enacting federal legislation. The *National Bellas Hess* decision results in the loss of \$3 to \$4 billion in revenues to states and localities every year. These monies are owed to state and local governments and are needed to maintain services and avoid tax increases.

Absent federal legislation, the state and local tax base will continue to narrow, as direct marketers expand their market share. This threatens the viability of the sales tax, the most important revenue source for state government programs and an important revenue source for many localities. Unless corrective action is taken, not only will the share of retail sales subject to tax collection shrink, reducing state revenues substantially from what they would be otherwise, but also those retailers who continue to collect the tax will be expected to carry an increasingly disproportionate tax burden. At some point, the system will breakdown.

Why should a multi-million dollar direct marketing corporation have any less responsibility than a local merchant for supporting public education or other public services—which in turn ensure the productive work force and the strong local economy on which sales to both retailers depend? The physical presence of one retailer in the community and another out of state is largely irrelevant to the benefit both receive as merchants.

Again, the members of NCSL strongly support S. 1825 and commend Senator Bumpers for introducing it. It's time to close the *Bellas Hess* loophole, restore tax fairness for main street merchants, and maintain the stability of the sales tax base on which state and local governments depend to provide basic services.



GEORGE GROSS
Executive Vice President • Washington
(202)296-7277

April 13, 1994

Senator Dale Bumpers
Chairman
Small Business Committee
428A Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Bumpers:

Attached is the statement of the Magazine Publishers of America (MPA) regarding "The Tax Fairness For Main Street Businesses Act" (S. 1825).

Sincerely,


George Gross

April 1994

MAGAZINE PUBLISHERS OF AMERICA
POSITION
ON
"THE TAX FAIRNESS FOR MAIN STREET BUSINESSES ACT"
S. 1825

The Magazine Publishers of America (MPA) strongly opposes "The Tax Fairness for Main Street Businesses Act" (S. 1825). MPA is the principal trade association of the American consumer magazine industry, representing about 200 member companies which publish approximately 800 magazines.

A major purpose of this legislation -- to eliminate unfair out-of-state competition -- is simply misplaced when applied to magazines. About three-fourths of all magazine sales are made through mail order subscriptions and approximately 90 percent of all magazine subscriptions in the United States results from mail order solicitation and response. With such an overwhelming portion of magazine sales coming from mail order solicitations, there clearly is no out-of-state competition with in-state retailers.

Furthermore, S. 1825 would impose upon non-competing magazine publishers the unfair burden of collecting state and local use tax on magazine subscriptions in the 26 states that tax magazine subscription sales. Current law requires only collection of tax in those states where the publishing firm has a physical presence or other meaningful nexus. While the Supreme Court, in its 1992 decision in Quill v. North Dakota, opened the door to the enactment of this legislation, the Court itself recognized that a State's collection requirement could be unduly burdensome to interstate commerce, and presumably unduly burdensome and unfair to out-of-state marketers. It stated that:

"North Dakota's use tax illustrates well how a state tax might unduly burden interstate commerce. On its face, North Dakota law imposes a collection duty on every vendor who advertises in the State three times in a single year. Thus, absent the Bellas Hess rule, a publisher who included a subscription card in three issues of its magazine, a vendor whose radio advertisements were heard in North Dakota on three occasions, and a corporation whose telephone sales force made three calls into the State, all would be subject to the collection duty."

Quill v. North Dakota, 112 U.S. 1904, at fnt. 6 (1992).

By requiring collection and remittance of sales tax, S. 825 would

- 2 -

impose a fundamentally unfair requirement upon companies having no physical or other meaningful presence in the state.

Finally, many publishing companies are small businesses, which would be especially impacted by this legislation. Many would have great difficulty absorbing the cost of collecting use taxes. These costs include expensive computer tax collection software, the cost of communicating tax instructions to customers, and the cost of customer failure to pay the tax. Adding the additional costs of collecting these taxes to the price of magazines would be particularly burdensome for publishers -- and readers -- of small, specialized magazines that carry little advertising and rely heavily on subscription revenue. In our view, enactment of this legislation would result in higher prices, fewer sales, and an inevitable decline in readership, especially outside of major metropolitan areas where newsstands are few and carry a very limited selection of publications.

MPA strongly urges Members of the Small Business Committee to oppose this legislation.

masa

Mail Advertising Service Association International

1421 Prince Street, Suite 200
Alexandria, Virginia 22314-2806
(703) 836-9200 FAX (703) 548-8204

April 11, 1994

TO: The Honorable Senator Dale Bumpers
Chairman
Senate Small Business Committee
U.S. Senate
Washington, D.C. 20510

FROM: Mail Advertising Service Association, International
1421 Prince Street - Suite 200
Alexandria, VA 22314-2806

REFERENCE: Tax Fairness for Main Street Business Act of 1994

Dear Senator Bumpers:

The following testimony is presented by the Mail Advertising Service Association International relative to the referenced legislation (S.1825).

On behalf of the 425 member companies of the Mail Advertising Service Association, we urge the Small Business Committee to reject consideration of the "Tax Fairness for Main Street Business Act of 1994".

Passage of this bill would result in significant financial impact to many of our members, who offer mail order fulfillment for a wide range of products. The process of interpreting and computing taxes on items for a myriad of taxing authorities, would substantially increase administrative costs for our members, reaching a point where it would not be profitable to conduct this type of business. This additional administrative burden would be something "Main Street" merchants would not have to assume. Application of an "average local tax rate", would require many customers to pay a tax rate higher than their prevailing local sales tax, resulting in increased costs for no improvement in services. Computer systems to define and calculate various tax codes would be cost prohibitive for our small to mid-size member companies.

Michael J. ...
Director

David ...

Robert A. Dunham

James W. Elliott

Judi Frick

Ronald D. Garrison

Don Hark

Richard E. Jorgensen

Gene Kerr

Henry Proxmire

David R. ...

Marvin Weinberg

Thomas H. Wilde

David A. Weaver

Senate Small Business Committee
April 11, 1994
Page Two

If our members are forced to reduce their involvement with this type of business, significant reductions in their work force would result. Not only would this increase the unemployment rolls, it would also reduce the spending power of these employees in the local area, which is "Main Street", USA. Consequently the merchants that would be negatively impacted, would be the very same ones the legislation was intended to help.

Our member companies are located throughout the United States and their employees are tax paying residents of these same "Main Street" communities, and through their taxes, pay for support of the services outlined in this legislation as being negatively impacted.

Enacting this legislation, would force many "energy conscious" consumers to change their buying habits. They would have to drive to and from local establishments, consuming precious fuel, to make purchases that could have been made through the mail. Not only would this impact the energy conservation efforts of this country, it may very well tax the "Main Street" infrastructure, resulting in increased cost to those municipalities.

To enact this legislation would diminish the alternatives available for senior citizens and physically impaired Americans who shop by mail for many products. These individuals, many existing on fixed incomes, should not be required to bear additional costs, because they are unable to frequent the local establishments and must order through the mail. It is clearly not in the best interest of these Americans to enact legislation that would restrict their use of mail order services.

If the intent of this legislation is "fairness", then consideration should be given to the impact it would have on hundreds of mail order companies, who are providing a valuable service to a wide range of customers throughout this country. Unmanageable taxing rules, difficulty in communicating those rules, unfair application to special needs individuals, and severe impact on the employees of the mail order establishments would create an "unfair" situation for our members.

Therefore, we urge the members of this committee to reject consideration of this proposed legislation.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. A. Weaver", written over the typed name.

David A. Weaver
President

**FEDERATION OF TAX ADMINISTRATORS**444 North Capitol St., NW, Washington, D.C. 20001 • (202) 624-5890

April 15, 1994

The Honorable Dale Bumpers
U. S. Senate
SD-229 Dirksen Senate Office Building
Washington, DC 20510-0401

Dear Senator Bumpers:

Let me first take this opportunity to thank you for your sponsorship of S. 1825, "The Tax Equity for Main Street Business Act of 1994," and for the hearing you conducted on April 13, 1994. I was fortunate to attend the hearing and felt it did an outstanding job of demonstrating the importance of your measure to Main Street retailers.

I feel compelled to respond to comments contained in the written testimony of Mr. Rudolph F. Regez of Swiss Colony regarding the discussions between direct marketers and state tax administrators that were held in 1991-1992. (See pp. 10-12 of written statement.) Mr. Regez states that the product of the negotiations was not acceptable to state tax administrators because they were unwilling to compromise and were concerned only with obtaining the most revenue possible for their states and localities. I was a member of the team of state administrators involved in those negotiations. The team included Heidi Heitkamp of North Dakota and Wade Anderson of Texas, representing the Multistate Tax Commission, and Gary Clark of Rhode Island, who represented the Federation of Tax Administrators along with me.

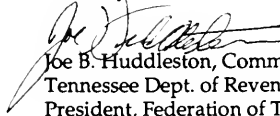
It is important that you understand the full context within which state administrators found the final proposal to be unacceptable. First, contrary to the assertion of Mr. Regez, state administrators did make substantial compromises during the negotiations and the final proposal would have represented a substantial departure from the normal practice in all states. Second, the Direct Marketing Association insisted that states and their organizations should refrain from pursuing the passage of federal legislation which would require direct marketers to collect state and local use taxes while the agreement was in effect. Finally, as a critical element in the evaluation of the proposal, the Direct Marketing Association was asked to query its members as a means of assessing the expected level of participation by direct marketers. The results of that inquiry indicated that firms that are responsible for less than 10 percent of the estimated volume of mail order sales would be expected to participate in the voluntary collection agreement -- leaving 90 percent of the problem unsolved.

Bumpers/Page Two

The action of state tax administrators in rejecting the agreement was driven in large part by our conclusion that the proposal did not significantly further the achievement of our primary aim throughout the discussions. Namely, our purpose had been to bring about a substantial parity between local retailers who must collect tax on their sales and direct marketers who sell similar items into a state without the collection of tax--precisely the objective of your bill. The level of voluntary compliance to be expected under the proposal did little to "level the playing field" and provide for consistent treatment of local retailers and direct marketers. When coupled with the compromises made and the conditions regarding future federal legislative activities, state administrators simply concluded that too much was being asked and too little was being achieved.

Thank you once again for your leadership on this important matter. I look forward to working with you to secure its passage. I will also be submitting a more complete written statement on behalf of the Federation of Tax Administrators in the near future. Please do not hesitate to contact me if you have any questions or I may be of assistance to you on this or any other matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joe B. Huddleston", is written over a horizontal line.

Joe B. Huddleston, Commissioner
Tennessee Dept. of Revenue and
President, Federation of Tax Administrators



STATE OF FLORIDA
DEPARTMENT OF REVENUE

TALLAHASSEE, FLORIDA 32399-0100

April 7, 1994

Senator Dale Bumpers
Chairman, Senate Small Business Committee
428-A Russell Senate Bldg.
Washington, DC 20510

Dear Senator Bumpers:

The Florida Department of Revenue wishes to submit the following statement for your hearing on use tax collection:

Florida loses more than \$200 million a year in uncollected taxes on out-of-state purchases. Concerned about this loss of revenue, the Florida Department of Revenue launched a statewide media campaign in November 1993 to educate Floridians about paying the tax. The campaign had three main goals:

- * To inform Floridians about the 6 percent tax so they could avoid penalties and interest by complying with the law.
- * To improve collection of the tax by voluntary compliance, which is less expensive and onerous for taxpayers.
- * To evaluate the efficiency and effectiveness of the way the tax is now collected. Currently, Floridians must report their out-of-state purchases and pay the tax every three months.

The campaign concluded in January. It was a partial success. The department educated millions of Floridians with television, radio and newspaper ads. Tax returns on out-of-state purchases nearly tripled, but produced only \$50,000 in taxes collected. The department concluded that the current system is not an efficient or effective way to collect the tax.

For example, of 11,000 previously identified mail-order clients that the department informed might owe tax, only 467 filed tax returns, resulting in \$7,600 collected. And of 250 out-of-state marketers contacted, only one company agreed to collect the tax from its customers.

The most successful efforts came from two other department initiatives. Through a state highway inspection program, the department identified out-of-state goods being shipped to Florida

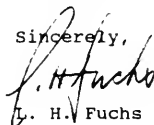
customers and has collected nearly \$3 million in taxes. Another project involving doctors, dentists and other professionals who often buy business equipment from out-of-state vendors resulted in \$76,000 in tax remittances.

These efforts, however, barely make a dent in the \$200 million of tax lost each year. Clearly, the only practical and cost-effective way to collect this revenue is through federal legislation requiring out-of-state dealers to charge sales tax.

The current system creates burdensome paperwork for those Florida taxpayers who wish to comply. It is unfair to Florida businesses, which collect the tax while supporting the local economy by providing jobs, renting office space and paying state and local taxes. Mail-order merchants take money from a community and give nothing back. These companies normally don't have the same overhead as a local merchant, so the catalog prices are already lower than retail. In addition, the buyer pays the shipping costs instead of having those expenses included in the local selling price. It is unfair for the mail-order company to have the additional advantage of being able to sell tax-free.

The Department of Revenue supports legislation drafted by U.S. Sen. Dale Bumpers and co-sponsored by U.S. Sen. Bob Graham. It would reduce unnecessary and burdensome paperwork for taxpayers, level the playing field for local merchants and significantly improve tax compliance.

Sincerely,

A handwritten signature in dark ink, appearing to read "L. H. Fuchs". The signature is fluid and cursive, with the first name "L." and last name "Fuchs" clearly distinguishable.

L. H. Fuchs

National Grange

of THE ORDER of PATRONS of HUSBANDRY

1616 H Street, N.W., Washington, D.C. 20006-4999 - (202) 628-3507 - FAX: (202) 347-1091

Robert E. Barrow, Master



March 25, 1994

The Honorable Dale Bumpers, Chairman
Senate Committee on Small Business
428A Russell Senate Office Building
Washington, D. C. 20510-6350

Dear Mr. Chairman:

The voting delegates to the National Grange's 127th Annual Convention adopted the following resolution regarding collection of state sales taxes on mail order house sales:

"The National Grange opposes legislation that would require mail order houses to collect state sales tax on mail order purchases. We further oppose a federal sales or use tax being imposed on mail order sales."

For hundreds of thousands of Americans who live in rural areas, mail order shopping is more than a convenience. It is a necessity. This is particularly true for senior citizens and the disabled. Mail order shopping provides access to health care products, clothing, and many other specialty items that are, otherwise, not readily available. Many rural residents, particularly senior citizens, lack mobility, and rely on mail order shopping for a great number of their everyday living needs. This is also true for busy farm wives who work in the field, raise children, and keep the farm accounts. They find mail order shopping assists them in better management of their time.

In addition, we oppose such a tax for the following reasons:

HURTS CONSUMERS - If federal use tax legislation is passed and direct marketers are forced to collect use taxes from out-of-state customers, mail order shopping would become confusing, cumbersome, and expensive.

AGGRAVATION, CONFUSION, AND LOST CONVENIENCE - One of the most attractive features of mail order shopping is its simplicity, which would be replaced by a maze-like array of tax calculations for each mail order purchase. This would be much more than an inconvenience for many Americans, who, by reason of physical condition, geographic isolation, or lack of time, have few, if any, other shopping alternatives for many products.

The Honorable Dale Bumpers, Chairman
March 25, 1994
Page 2

UNFAIR TAXATION - Traditionally, a consumer pays a sales tax on certain items when they are purchased in a store. The seller collects the tax because the seller receives certain services and protections from the taxing state.

The use tax is a tax on the use and enjoyment of one's own property by a state that does not have any connection with the sale. The customer is making a purchase from another state, and the seller does not receive any services or protections from the state that is levying the tax.

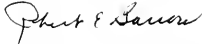
REGRESSIVE TAXATION - As with the sales tax, the mail order tax would fall most heavily on the poor - those who are forced to spend a higher percentage of their income. In fact, a mail order tax would fall hardest on those who can least avoid it, not just because of poverty, but also where age, physical handicap, or isolated geographic location makes alternative shopping difficult.

HIGHER PRICES - Most companies believe that it will be impossible for them to absorb these new costs of doing business. Direct marketers will be faced with a choice: raise prices in order to compensate for these government-induced cost increases, or go out of business. Either way, the consumer loses.

It is for these reasons that the National Grange, which represents approximately 300,000 members, opposes S. 1825. It would disadvantage our rural members and others who live in rural areas.

Thank you for allowing the National Grange to express our opposition. Please include this letter in the printed record of this hearing. Thank you.

Sincerely,



Robert E. Barrow, Master
National Grange of the Order
of Patrons of Husbandry

REB/rfh



Brad Keeton, Master
Oklahoma State Grange
Route 1 Box 106
South Coffeyville, OK. 74072

March 30, 1994

The Honorable Dale Bumpers, Chairman
Senate Committee on Small Business
428A Russell Senate Office Building
Washington, D.C. 20510-6350

Dear Mr. Chairman:

The voting delegates to the National Grange's 127th Annual Convention adopted the following resolution regarding collection of state sales taxes on mail order house sales:

"The National Grange opposes legislation that would require mail order houses to collect state sales tax on mail order purchases. We further oppose a federal sales or use tax being imposed on mail order sales."

For hundreds of thousands of Americans who live in rural areas, mail order shopping is more than a convenience. It is a necessity. This is particularly true for senior citizens and the disabled. Mail order shopping provides access to health care products, clothing, and many other specialty items that are, otherwise, not readily available. Many rural residents, particularly senior citizens, lack mobility, and rely on mail order shopping for a great number of their everyday living needs. This is also true for busy farm wives who need to shop, raise children, and keep the farm accounts. They find mail order shopping assists them in better management of their time.

In addition, we oppose such a tax for the following reasons:

HURT TO CONSUMER:- If federal use tax legislation is passed and direct marketers are forced to collect use taxes from out-of-state customers, mail order shopping would become confusing, cumbersome, and expensive.

AGGRAVATION, CONFUSION, AND LOST CONVENIENCE:- One of the most attractive features of mail order shopping is its simplicity, which would be replaced by a maze-like array of tax calculations for each mail order purchase. This would be much more than an inconvenience for many Americans, who, by reason of physical condition, geographic isolation, or lack of time, have few, if any, other shopping alternatives for many products.



UNFAIR VALATION - Traditionally, a consumer pays a sales tax on certain items when they are purchased in a store. The seller collects the tax because the seller receives certain services and protections from the taxing state.

The use tax is a tax on the use and enjoyment of one's own property by a state that does not have any connection with the sale. The customer is making a purchase from another state, and the seller does not receive any services or protections from the state that is levying the tax.

REGRESSIVE VALATION - As with the sales tax, the mail order tax would fall most heavily on the poor - those who are forced to spend a higher percentage of their income. In fact, a mail order tax would fall hardest on those who can least avoid it, not just because of poverty, but also where age, physical handicap, or isolated geographic location makes alternative shopping difficult.

HIGHER PRICES - Most companies believe that it will be impossible for them to absorb these new costs of doing business. Direct marketers will be faced with a choice: raise prices in order to compensate for these government-induced cost increases, or go out of business. Either way, the consumer loses.

It is for these reasons that the Oklahoma State Grange, which represents 1,200 members, opposes S. 1925. It would disadvantage our rural members and others who live in rural areas.

Thank you for allowing the Oklahoma State Grange to express our opposition. Please include this letter in the printed record of this hearing. Thank you.

Sincerely,

Brad Keeton, Master
Oklahoma State Grange



RHODE ISLAND STATE GRANGE

John A. Lawson, Jr.
Master

120 Wilson Avenue
Rumford, RI 02916
(401) 434-1491

March 29, 1994

The Honorable Dale Bumpers, Chairman
Senate Committee on Small Business
428A Russell Senate Office Building
Washington, DC 20510-6350

Dear Mr. Chairman:

The voting delegates to the National Grange's 127th Annual Convention adopted the following resolution regarding collection of state sales taxes on mail order house sales:

"The National Grange opposes legislation that would require mail order houses to collect sales tax on mail order purchases. We further oppose a federal or use sales tax being imposed on mail order sales."

For hundreds of thousands of Americans who live in rural areas, mail order shopping is more than a convenience. It is a necessity. This is particularly true for senior citizens and the disabled. Mail order shopping provides access to health care products, clothing, and many other specialty items that are, otherwise, not readily available. Many rural residents, particularly senior citizens, lack mobility, and rely on mail order shopping for a great number of their everyday living needs. This is also true for busy farm wives who work in the field, raise children, and keep the farm accounts. They find mail order shopping assists them in better management of their time.

In addition, we oppose such a tax for the following reasons:

HURTS CONSUMERS - If federal use tax legislation is passed and direct marketers are forced to collect use taxes from out-of-state customers, mail order shopping would become confusing, cumbersome, and expensive.

AGGRAVATION, CONFUSION, AND LOST CONVENIENCE - One of the most attractive features of mail order shopping is its simplicity, which would be replaced by a maze-like array of tax calculations for each mail order purchase. This would be much more than an inconvenience for many Americans, who, by reason of physical condition, geographic location, or lack of time, have few, if any, other shopping alternatives for many products.

UNFAIR TAXATION - Traditionally, a consumer pays a sales tax on certain items when they are purchased in a store. The seller collects the tax because the seller receives certain services and protections from the taxing state.

The use tax is a tax on the use and enjoyment of one's own property by a state that does not have any connection with the sale. The customer is making a purchase from another state, and the seller does not receive any services or protection from the state that is levying the tax.

REGRESSIVE TAXATION - As with the sales tax, the mail order tax would fall most heavily on the poor - those who are forced to spend a higher percentage of their income. In fact, a mail order tax would fall hardest on those who can least avoid it, not just because of poverty, but also where age, physical handicap, or isolated geographic location makes alternative shopping difficult.

HIGHER PRICES - Most companies believe that it will be impossible for them to absorb these new costs of doing business. Direct marketers will be faced with a choice: raise prices in order to compensate for these government-induced cost increases, or go out of business. Either way, the consumer loses.

It is for these reasons that the Rhode Island State Grange, which represents almost 2,000 members, opposes S. 1825. It would disadvantage our rural members and others who live in rural areas as well as senior citizens and those who are physically disabled.

Thank you for allowing the Rhode Island State Grange to express our opposition. Please include this letter in the printed record of this hearing. Thank you.

Sincerely,



John A. Lawson, Jr., Master
R.I. State Grange

JAL:sal

cc: Senator John Chafee
Senator Claiborne Pell
Representative Ronald Machtley
Representative John Reed

*Patrons of
Husbandry*



Colorado State Grange

2260 South Xanadu Way — Suite 230 • Aurora, Colo. 80014-1373
Phone 303-752-0406
March 28, 1994

The Honorable Dale Bumpers, Chairman
Senate Committee on Small Business
428A Russell Senate Office Building
Washington, D.C. 20510-6350

Dear Mr. Chairman:

The voting delegates to the National Grange's 127th Annual Convention adopted the following resolution regarding collection of state sales taxes on mail order house sales:

"The National Grange opposes legislation that would require mail order houses to collect state sales tax on mail order purchases. We further oppose a federal sales or use tax being imposed on mail order sales."

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In addition, we oppose such a tax for the following reasons:

HURTS CONSUMERS - If federal use tax legislation is passed and direct marketers are forced to collect use taxes from out-of-state customers, mail order shopping would become confusing, cumbersome, and expensive.

AGGRAVATION, CONFUSION, AND LOST CONVENIENCE - One of the most attractive features of mail order shopping is its simplicity, which would be replaced by a maze-like array of tax calculations for each mail order purchase. This would be much more than an inconvenience for many Americans, who, by reason of physical condition, geographic isolation, or lack of time, have few, if any, other shopping alternatives for many products.

UNFAIR TAXATION - Traditionally, a consumer pays a sales tax on certain items when they are purchased in a store. The seller collects the tax because the seller receives certain services and protections from the taxing state.

The use tax is a tax on the use and enjoyment of one's own property by a state that does not have any connection with the sale. The customer is making a purchase from another state, and the seller does not receive any services or protections from the state that is levying the tax.

REGRESSIVE TAXATION - As with the sales tax, the mail order tax would fall most heavily on the poor - those who are forced to spend a higher percentage of their income. In fact, a mail order tax would fall hardest on those who can least avoid it, not just because of poverty, but also where age, physical handicap, or isolated geographic location makes alternative shopping difficult.

HIGHER PRICES - Most companies believe that it will be impossible for them to absorb these new costs of doing business. Direct marketers will be faced with a choice: raise prices in order to compensate for these government-induced cost increases, or go out of business. Either way, the consumer loses.

It is for these reasons that the Colorado State Grange, which represents 10,000 members, opposes S. 1825. It would disadvantage our rural members and others who live in rural areas.

Thank you for allowing the Colorado State Grange to express our opposition. Please include this letter in the printed record of this hearing. Thank you.

Sincerely,

Terry Miller
President

TM:jg

129 Cherry Hill Road NW
Cedar Rapids, IA 52405
April 12, 1994



IOWA STATE GRANGE

The Honorable Dale Bumpers, Chairman
Senate Committee on Small Business
428A Russell Senate Office Building
Washington, D.C. 20510-6350

Dear Mr. Chairman,

The voting delegates to the National Grange's 127th Annual Convention adopted the following resolution regarding collection of state sales taxes on mail order house sales:

"The National Grange opposes legislation that would require mail order houses to collect state sales tax on mail order purchases. We further oppose a federal sales or use tax being imposed on mail order sales."

For hundreds of thousands of Americans who live in rural areas, mail order shopping is more than a convenience. It is a necessity. This is particularly true for senior citizens and the disabled. Mail order shopping provides access to health care products, clothing, and many other specialty items that are, otherwise, not readily available. Many rural residents, particularly senior citizens, lack mobility, and rely on mail order shopping for a great number of their everyday living needs. This is also true for busy farm wives who work in the field, raise children, and keep the farm accounts. They find mail order shopping assists them in better management of their time.

In addition, we oppose such a tax for the following reasons:

HURT CONSUMERS - If federal use tax legislation is passed and direct marketers are forced to collect use taxes from out-of-state customers, mail order shopping would become confusing, cumbersome, and expensive.

AGGRAVATION, CONFUSION, AND LOST CONVENIENCE - One of the most attractive features of mail order shopping is its simplicity, which would be replaced by a maze-like array of tax calculations for each mail order purchase. This would be much more than an inconvenience for many Americans, who, by reason of physical condition, geographic isolation, or lack of time, have few, if any, other shopping alternatives for many products.

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The use tax is a tax on the use and enjoyment of one's own property by a state that does not have any connection with the sale. The customer is making a purchase from another state, and the seller does not receive any services or protections from the state that is levying the tax.

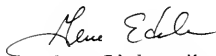
REGRESSIVE TAXATION - As with the sales tax, the mail order tax would fall most heavily on the poor - those who are forced to spend a higher percentage of their income. In fact, a mail order tax would fall hardest on those who can least avoid it, not just because of poverty, but also where age, physical handicap, or isolated geographic location makes alternative shopping difficult.

HIGHER PRICES - Most companies believe that it will be impossible for them to absorb these new costs of doing business. Direct marketers will be faced with a choice: raise prices in order to compensate for these government-induced cost increases, or go out of business. Either way, the consumer loses.

It is for these reasons that the Iowa State Grange, which represents over 600 members, opposes S. 1825. It would disadvantage our rural members and others who live in rural areas.

Thank you for allowing the Iowa State Grange to express our opposition. Please include this letter in the printed record of this hearing. Thank you.

Sincerely,



Gene Edelen, Master
Iowa State Grange

cc: Senator Charles E. Grassley
Senator Tom Harkin
National Grange

Organized 1873

P.O. Box 574
 Ravenswood, WV 26164
 March 28, 1994



The Honorable Dale Bumpers, Chairman
 Senate Committee on Small Business
 428A Russell Senate Office Building
 Washington, D. C. 20510-6350

Dear Mr. Chairman:

The West Virginia State Grange, which represents 500 members, opposes S.1825. Our state is in agreement with National Grange that this would disadvantage our rural members and others who live in rural areas.

For hundreds of thousands of American who live in rural areas, mail order shopping is more than a convenience. It is a necessity. This is particularly true for senior citizens and the disabled. Mail order shopping provides access to health care products, clothing, and many other specialty items that are, otherwise, not readily available. Many rural residents, lack mobility, and rely on mail order shopping for a great number of their everyday living needs. This is especially true for busy farm wives who work in the field, raise children, and keep the farm accounts.

We oppose such a tax as we feel it hurts the consumers, it is an unfair tax especially for the poor and the mail order tax would fall hardest on those who can least afford it.

Thank you for allowing the West Virginia State Grange to express our opposition. Please include this letter in the printed record of this hearing. Thank you.

Very sincerely,

Martha McGoskey
 WV State Grange Master



NEW JERSEY STATE GRANGE, P of H

JOHN U. MAPLE, Master

2785 Main Street, Lawrenceville, New Jersey 08648

(609) 896-0935

March 30, 1994

The Honorable Dale Bumpers, Chairman
Senate Committee on Small Business
428A Russell Senate Office Building
Washington, DC 20510-6350

Dear Mr. Chairman:

The voting delegates to the National Grange's 127th Annual Convention adopted the following resolution regarding collection of state sales taxes on mail order house sales:

"The National Grange opposes legislation that would require mail order houses to collect state sales tax on mail order purchases. We further oppose a federal sales or use tax being imposed on mail order sales"

For hundreds of thousands of Americans who live in rural areas, mail order shopping is more than a convenience, it is a necessity. This is particularly true of senior citizens and the disabled. Mail order shopping provides access to health care products, clothing, and many other speciality items that are, otherwise not readily available. Many rural residents, particularly senior citizens, lack mobility, and rely on mail order shopping for a great number of their everyday living needs. This is also true for busy farm wives who work in the field, raise children, and keep the farm accounts. They find mail order shopping assists them in better management of their time.

In addition, we oppose such a tax for the following reasons:

HURTS CONSUMERS If federal use tax legislation is passed and direct marketers are forced to collect use taxes from out-of-state customers, mail order shopping would become confusing, cumbersome and expensive.

AGGRAVATION, CONFUSION AND LOST CONVENIENCE One of the most attractive features of mail order shopping is its simplicity, which would be replaced by a maze-like array of tax calculations for each mail order purchase. This would be much more than an inconvenience for many Americans, who, by reason of physical condition, geographic isolation, or lack of time, have few, if any, other shopping alternatives for many products.

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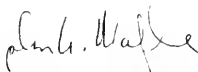
the sale. The customer is making a purchase from another state and the seller does not receive any services or protections from the state that is levying the tax.

REGRESSIVE TAXATION As with the sales tax, the mail order tax would fall most heavily on the poor — those who are forced to spend a higher percentage of their income. In fact, a mail order tax would fall hardest on those who can least afford it, not just because of poverty, but also where age, physical handicap, or isolated geographic location makes alternative shopping difficult.

HIGHER PRICES Most companies believe that it will be impossible for them to absorb these new costs of doing business. Direct marketers will be faced with a choice: raise prices in order to compensate for these government-induced costs increases, or to go out of business. Either way, the consumer loses.

It is for these reasons that the New Jersey State Grange, which represents 4,000 members, opposes S1825. It would disadvantage our rural members and others who live in rural areas.

Thank you for allowing the New Jersey State Grange to express our opposition. Please include this letter in the printed record of this hearing. Thank you.



John U. Maple, Master
New Jersey State Grange



IDAHO STATE GRANGE

OFFICE OF THE STATE MASTER

March 31, 1994

The Honorable Dale Bumpers, Chairman
Senate Committee on Small Business
428A Russell Senate Office Building
Washington DC 20510-6350

Dear Mr. Chairman:

The voting delegates to the National Grange's 127th Annual Convention adopted the following resolution regarding collection of state sales taxes on mail order house sales:

"The National Grange opposes legislation that would require mail order houses to collect state sales tax on mail order purchases. We further oppose a federal sales or use tax being imposed on mail order sales."

For hundreds of thousands of Americans who live in rural areas, mail order shopping is more than a convenience. It is a necessity. This is particularly true for senior citizens and the disabled. Mail order shopping provides access to health care products, clothing, and many other specialty items that are, otherwise, not readily available. Many rural residents, particularly senior citizens, lack mobility, and rely on mail order shopping for a great number of their everyday living needs. This is also true for busy farm wives who work in the field, raise children, and keep the farm accounts. They find mail order shopping assists them in better management of their time.

One of the most attractive features of mail order shopping is its simplicity, which would be replaced by a maze-like array of tax calculations for each mail order purchase. This would be much more than an inconvenience for many Americans, who, by reason of physical condition, geographic isolation, or lack of time, have few, if any, other shopping alternatives for many products.

It is for these reasons that the Idaho State Grange, which represents 5500 members, opposes S. 1825. It would disadvantage our rural members and others who live in rural areas.

Thank you for allowing the Idaho State Grange to express our opposition. Please include this letter in the printed record of this hearing. Thank you.

Sincerely,

Arley J. Weaver
Arley J. Weaver, Master
Idaho State Grange

AJW/fq



THE WYOMING STATE GRANGE



MASTER
Donna Oberf
2144 Sage Ave.
Casper, WY 82604
(307) 265-8277



SECRETARY
Patti Fazendin
Rt. 1 Box 286A - 2 Young Rd.
Riverton, WY 82501
(307) 856-3331

March 31, 1994

The Honorable Dale Bumpers, Chairman
Senate Committee on Small Business
428A Russell Senate Office Building
Washington, D. C. 20510-6350

Dear Mr. Chairman:

The Wyoming State Grange delegates supported the resolution regarding collection of state sales taxes on mail order house sales. The resolution adopted opposed legislation requiring collection of state sales tax on mail order purchases and also opposed the use tax or use tax being imposed on mail order sales.

Mail order shopping is a necessity for many rural Americans providing access to health care products, specialty items not other wise readily available, and many other items you enjoy the privilege of purchasing with ease and affordability.

We also oppose such a tax because we view it as unfair taxation. The consumer paying the tax does not receive the municipal or state services levied by the tax. A Use tax is a tax for the use and/or enjoyment of one's own property and this tax being collected from a taxpayer that has not use or enjoyment of property in another state is unfair.

The majority of this tax would be paid by the those least able to afford it. Generally in Wyoming those purchasing health care and specialty products through mail order suppliers are forced to because of the high cost and low availability in our rural areas. This tax would become an even greater burden on those least able to afford the products.

Thank you for allowing the Wyoming State Grange to express its opposition to Senate 1825. Please include this letter in the printed record of this hearing.

Donna L. Oberf

cc: Senator Wallop
Senator Simpson
Representative Thomas
National Grange

Massachusetts State Grange, P. of H., Inc.

SERVING THE PATRONS OF MASSACHUSETTS SINCE 1873

March 31, 1994

THOMAS F. SEVERANCE, Master
47 Walnut Street
N. Brookfield, MA 01535-1813
(508) 867-2355

PHYLLIS E. POTTER, Lecturer
P.O. Box 804
Wales, MA 01081-0804
(413) 245-7637

KATHLEEN M. PETERSON, Secretary
P.O. Box 362
Jefferson, MA 01522-0462
(508) 829-9267

The Honorable Dale Bumpers, Chairman
Senate Committee on Small Business
428A Russell Senate Office Building
Washington, D. C. 20510-6350

Dear Mr. Chairman:

The voting delegates to the National Grange's 127th Annual Convention adopted the following resolution regarding collection of sales taxes on mail order house sales:

"The National Grange opposes legislation that would require mail order houses to collect state sales tax on mail order purchases. We further oppose a federal sales or use tax being imposed on mail order sales."

For hundreds or thousands of Americans who live in rural areas, mail order shopping is more than a convenience. It is a necessity. This is particularly true for senior citizens and the disabled. Mail order shopping provides access to health care products, clothing, and many other specialty items that are, otherwise, not readily available. Many rural residents, particularly senior citizens, lack mobility, and rely on mail order shopping for a great number of their everyday living needs. This is also true for busy farm wives who work in the field, raise children, and keep the farm accounts. They find mail order shopping assists them in better management of their time.

In addition, we oppose such a tax for the following reasons:

HURST CONSUMERS - If federal use tax legislation is passed and direct marketers are forced to collect use taxes from out-of-state customers, mail order shopping would become confusing, cumbersome, and expensive.

AGGRAVATION, CONFUSION, AND LOST CONVENIENCE- One of the most attractive features of mail order shopping is its simplicity which would be replaced by a maze-like array of tax calculations for each mail order purchase. This would be much more than an inconvenience for many Americans, who, by reason of physical condition, geographic isolation, or lack of time, have few, if

MASSACHUSETTS STATE GRANGE

- 2 -

any, other shopping alternatives for many products.

UNFAIR TAXATION -- Traditionally, a consumer pays a sales tax on certain items when they are purchased in a store. The seller collects the tax because the seller receives services and protections from the taxing state.

The use tax is a tax on the use and enjoyment of one's own property by s state that does not have any connection with the sale. The customer is making a purchase from another state, and the seller does not receive any services or protections from the state that is levying the tax.

REGRESSIVE TAXATION - As with the sales tax, the mail order tax would fall most heavily on the poor- those who are forced to spend a higher percentage of their income. In fact, a mail order tax would fall hardest on those who can least avoid it, not just because of poverty, but also where age, physical handicap, or isolated geographic location makes alternative shopping difficult.

HIGHER PRICES - Most companies believe that it will be impossible for them to absorb these new costs of doing business. Direct marketers will be faced with a choice: raise prices in order to compensate for these government-induced cost increases, or go out of business. Either way, the consumer loses.

It is for these reason that the Massachusetts State Grange, which represents 6500 members, opposes S. 1825. It would disadvantage our rural members and others who live in rural areas.

Thank you for allowing the Massachusetts State Grange to express our opposition. Please include this letter in the printed record of this hearing. Thank you.

Sincerely and fraternally,



Thomas F. Severance, Master
Massachusetts State Grange

TFS/mms

Oregon State Grange

1125 S E Madison. #102, Portland, OR 97214-3681, 503-236-1118, FAX 503-236-4018

Officer

Master
Dale Morris



March 25, 1994

PGCMONA

Baker #24
Truscott (rbv, Master
Santon #26
Jim Gray, Master
Clatsco #19
Dg (Bud)
Clackamas #1
Bob Force, Master
Columbia #18
Teresa Road, Master
Cops #30
Phillip Parisn, Master
Crooked River #42
Norm Sather, Master
Curry #37
Bessie Disher, Master
Deschutes #25
Helen Pastovich, Master
Douglas #13
John Fine, Master
Harney-Grant #38
Sarah Tyler, Master
Hood River #8
Lucille Myers, Master
Jackson #27
Zelma Foote, Master
Josephine #20
Kendall Phillips, Master
Klamath #34
Vickie High, Master
Lake #35
Donald Simms, Master
Lane #14
Joe Canaday, Master
Lincoln #10
William Brown, Master
Linn #12
Chris Febman, Master
Maine #33
Malinda Burdic, Master
Marion #4
Wayne Gilbert, Master
Multnomah #15
Barbara Giddeon, Master
Polk #3
Dona Mankin, Master
Tillamook #9
Albert Griffin, Master
Umatilla #26
Morton Wolverton, Master
Union #6
George Monroe, Master
Willowa #22
Warren Voss, Master
Wasco #11
Jim Newton, Master
Washington-Yamhill #2
James Clute, Master
West Coast Dist.
Earl White, Master
Wheatland #29
Barton Clark, Master

The Honorable Dale Bumpers, Chairman
Senate Committee on Small Business
428A Russell Senate Office Building
Washington, D.C. 20510-6350

Dear Mr. Chairman:

The voting delegates to the National Grange's 127th Annual Convention adopted the following resolution regarding collection of state sales taxes on mail order house sales:

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cont'd
(1)

Oregon State Grange

1125 S E Madison, #102, Portland, OR 97214-3681, 503-236-1118, FAX 503-236-4018

Officer

Master
Dale Morris



UNFAIR TAXATION--Traditionally, a consumer pays a sales tax on certain items when they purchase in a store. The seller collects the tax because the seller receives certain services and protections from the taxing state.

The use tax is a tax on the use and enjoyment of one's own property by a state that does not have any connection with the sale. The customer is making a purchase from another state, and the seller does not receive any services or protections from the state that is levying the tax.

FCMDNA

Baker #24
Truscott Irby, Master
Benton #26
Jim Gray, Master
Clatsop #19
Gg (Bud)
Clackamas #1
Bob Price, Master
Columbia #18
Teresa Hoag, Master
Coos #20
Phillip Parish, Master
Crooked River #42
Norm Sather, Master
Curry #37
Bessie Disher, Master
Deschutes #25
Helen Pastovich, Master
Douglas #13
John Fine, Master
Harney-Grant #38
Sarah Tyler, Master
Hood River #8
Lucille Myers, Master
Jackson #27
Zelma Foote, Master
Josephine #20
Kendell Phillips, Master
Klamath #34
Vickie High, Master
Lake #35
Donald Sinms, Master
Lane #14
Joe Canaday, Master
Lincoln #10
William Brown, Master
Linn #12
Chris Rebman, Master
Malheur #33
Malinda Burdick, Master
Marion #4
Wayne Gilbert, Master
Multnomah #15
Barbara Giddeon, Master
Polk #3
Dona Mankin, Master
Tillamook #9
Albert Griffin, Master
Umatilla #26
Morton Wolverton, Master
Union #6
George Monroe, Master
Wallowa #22
Warren Voss, Master
Wasco #11
Jim Newton, Master
Washington-Yamhill #2
James Clute, Master
West Coast Dist.
Earl White, Master
Wheatland #29
Barton Clark, Master

REGRESSIVE TAXATION--As with the sales tax, the mail order tax would fall most heavily on the poor. Those who are forced to spend a higher percentage of their income. In fact, a mail order tax would fall hardest on those who can least avoid it, not just because of poverty, but also where age, physical handicap, or isolated geographic location makes alternative shopping difficult.

HIGHER PRICES-- Most companies believe that it will be impossible for them to absorb these new costs of doing business. Direct marketers will be faced with a choice:

Raise prices in order to compensate for these government induced cost increases, or go out of business. Either way, the consumer loses.

It is for these reasons that the Oregon State Grange, which represents Oregon members, oppose S 1825. It would disadvantage our rural members and others who live in rural areas.

Thank you for allowing Oregon State Grange, to express our opposition. Please include this letter in the printed record of this hearing. Thank You.

Sincerely

Dale W. Morris
Dale W. Morris, Master
Oregon State Grange

(2)



ANTIQUARIAN BOOKSELLERS'
ASSOCIATION OF AMERICA, INC.

50 ROCKEFELLER PLAZA
NEW YORK, N.Y. 10020



Telephone: (212) 757-9395

Fax: (212) 459-0307

April 8, 1994

The Honorable Dale Bumpers
Chairman
Committee on Small Business
SR-428A Russell Senate Office Building
Washington, DC 20510-6350

Dear Chairman Bumpers:

Please include the following in the Hearing Record of S 1825 concerning the collection of sales tax on interstate transactions:

The Antiquarian Booksellers' Association of America, Inc. (ABAA) is concerned about the possible impact of S 1825 "Tax Fairness For Main Street Business Act Of 1994" on the trade in rare and out-of-print books.

The ABAA is the leading association of rare book dealers in the United States, and is composed of more than 400 dealers in rare and out-of-print books, documents, manuscripts and related materials (Exhibit 1). While Association members are quite active (minimum requirements for membership are that the business be either a full-time occupation or have annual sales of at least \$100,000), they are only part of a much larger trade encompassing many thousands of dealers.

Customers are private collectors, independent scholars and libraries. They range from individuals of modest means to great institutions such as the Library of Congress. Libraries buy to meet their often changing research needs and to replace losses from wear, deterioration and theft. Buyers of books have in common a desire to preserve human culture in all its written forms.

Most dealers in rare books find mail order is a significant part of their business. Many are Main Street Businesses with open shops, but -- since clients are scattered all over the world -- they also conduct business by mail as a matter of necessity. Most booksellers operate a mail order business in one or more of the following forms: 1) issuing catalogs and lists; 2) offering books from stock to individual clients based on the clients' needs (known as "quoting" in the book trade); 3) searching for specific titles for individual clients.

The search process usually consists of sending want lists to dealers across the country as well as advertising wants in specialized trade publications which go to thousands of dealers (Exhibit 2). After offers ("quotes") have been received, the dealer selects the most appropriate offer and informs the customer. If the client agrees to buy the book, then shipping and payment arrangements are made.

Not only are buyers scattered, so are the books. Consequently, a large, informal network of dealers has developed over the years. They are in contact by mail, telephone, fax and through trade journals (Exhibit 2). Many operate from small offices or from home. Some are part-time and engage in the book trade for pleasure as well as to supplement their income (a number are retirees).

If the requirements of collecting sales tax, or merely the fear of being forced to do so, causes booksellers to curtail their activities, then it will become more difficult for surviving dealers to find the books their clients need.

As you can see, the book trade depends upon cooperation among its members. We take a collegial approach to our business and look upon other booksellers, regardless of location, as colleagues more than competitors.

Among the ABAA's concerns are:

WHO MUST COLLECT SALES TAX? -- Rules affecting business activity must be clear and workable to facilitate economic efficiency. The present physical presence test on collecting sales tax meets these criteria. The proposed legislation with minimum limits of \$3,000,000 total annual sales or \$100,000 sales into a single state may create problems.

While most booksellers have annual sales of less than \$3,000,000, there are some who exceed that amount. Among those who exceed this total, several have large local stores, with mail order as a part of their business. Thus, they will be forced to set up an expensive system to support only a portion of their business. Under these circumstances, it would not be surprising to see some dealers drop their mail order business entirely, with the result that collectors, libraries and dealers would find it more difficult to obtain material, and the store's employment probably would be reduced.

Consider also the case of a bookselling firm which normally has sales in the two million dollar range and then experiences an unusually good year with sales over three million. At what point are they liable to collect sales tax? Must they collect for the entire year or from the point at which their sales exceed three million? What happens if their sales fall back into the two million range the following year? Must they still collect tax, or are they again exempt?

The one hundred thousand dollar per state rule can create even greater problems in the book trade. It is quite possible for a bookseller with a modest business to place a valuable collection with a buyer in another state. If this collection exceeds one hundred thousand dollars in value, the same questions arise -- at what point and for how long must the bookseller collect tax on sales to that state?

MAIN STREET BUSINESSES AFFECTED -- The above concern regarding the annual sales limit applies not only to booksellers, but to the many Main Street Businesses across the country with sales of more than three million dollars. What do they do when a customer comes in and asks that an item be shipped out of state? They either have to incur considerable expense or eliminate a service which customers want.

WILL MINIMUM SALES LEVELS CHANGE? -- Even if the above questions can be answered satisfactorily, how long would the three million dollar and one hundred thousand dollar limits continue to protect small businesses? Inflation will erode the protection over time, and smaller and smaller businesses will fall into the net.

Further, once this legislation is in place, it will be simple to amend it and reduce the minimums. If the states find that sales tax revenues do not meet their expectations, Congress can expect them to once again be knocking on the door and asking to extend the reach of this law. Since at present no one actually knows how much sales tax revenue is involved, there is a very real possibility that this will be the case.

AUDITS -- once this law goes into effect, how will the states determine whether a business has sales of more than \$100,000 into that state? The only way to be sure will be to conduct an audit. Thus an

unintended consequence of this law will be that every business in the United States is potentially subject to audit by every state with a sales tax!

The cost of audits to both states and businesses would be considerable, not to mention wasteful duplication of effort by the states. There also is potential for abuse. How will local businesses protect themselves from arbitrary actions by distant states?

HOW DO WE COMPLY? -- The cost of compliance to business is high and disproportional so for small businesses. In addition to varying sales tax rates, each state has its own forms and its own rules and regulations on such matters as filing dates, definition of taxable and exempt goods, penalties and interest for late filing, discounts for timely filing, deadlines for appeals, etc. These rules are constantly changing and it is difficult even for specialists to keep up.

A particular concern to booksellers is the matter of determining when sales tax should be applied. Most states exempt goods sold to certain institutions such as universities, libraries and historical societies. However, the definition of exempt institution may vary from state to state, and it will be necessary to track the exemption status of each client.

Also, many booksellers sell specialized journals as a service to their clients. Most states exempt periodicals from sales tax. However, the state of Washington requires that periodicals be taxed. There may be other states which also tax periodicals.

Another problem involves sales for resale. A substantial part of the out-of-print book trade involves dealer-to-dealer sales as books make their way to the ultimate buyer. Many, but not all, states honor out-of-state resale licenses. Some require registration by dealers from other states who want to buy, even if the dealers do not sell into that state. Also, the state of Maryland requires that tax be collected on sales for resale which are less than \$200.00. It will be necessary to maintain up-to-date resale certificates for every dealer with whom one has a transaction.

Sales staff will need to be conversant with all these situations in order to bill clients accurately.

As a practical matter, the rules are so complex and varying that it is extremely difficult for any business to be in compliance with the rules for sales tax collection in every state.

The majority of booksellers are small businesses with three or fewer employees (in many cases it is strictly a family affair with no outside employees). Typically, the only tax returns they file are annual income taxes, sales taxes for their home state, and payroll taxes if they have employees. To add 46 sales tax returns to this creates an enormous burden which will hamper operations.

COMPUTERS ARE NOT THE ANSWER -- A common response to the above concerns is say they can be dealt with by computers. This view reflects a lack of knowledge about the cost and difficulty of developing and operating computer systems, and about the complexity of tax compliance.

We know of only one commercially available software system designed to handle state and local sales tax compliance. This system (from Vertex, Inc. of Berwyn, Pennsylvania) costs between \$1,000 and \$25,000 depending on the number of states covered, a significant cost to most booksellers. The compliance program interfaces with a company's billing system, which means added cost to set up the system. To this one can add training, additional equipment in many cases, and the cost of program updates which are essential to staying abreast of changes in state laws and regulations.

Few antiquarian booksellers have a computerized billing system that could interface with the compliance program. Many do not even have computers at all. (It is quite possible to be a suc-

cessful bookseller with just a typewriter and lots of 3 x 5 cards -- it's no surprise we have been called the last of the green eyeshade businesses.)

Typically, booksellers who do have computers use them for preparing catalogs, for mailing lists, and for accounting. Many dealers do not even put their inventory on computer. (It should be noted that for dealers in rare and out-of-print books each item is distinct from every other item in stock, and standard accounting programs -- which assume large quantities of identical goods -- are not suitable.)

We are aware that compliance means more than generating numbers and filling out forms. Inevitably, the states will have questions about returns. Errors or misunderstandings can arise. Extensive correspondence may be needed, not to mention the possibility of audits. Dealing with all the above will probably be a full-time job for at least one person.

The cost of meeting the states' requirements is beyond the capacity of many booksellers, and they will be faced with the unpleasant prospect of curtailing mail order operations or even shutting down entirely.

FOREIGN COMPETITION -- In some specialty subjects, such as manuscripts and early printed books, there is significant competition from booksellers outside the United States. There does not appear to be any practical way of enforcing collection on these businesses, and they would gain a competitive advantage over American firms under this bill.

OTHER TRADES -- Every concern which we have expressed will apply in some degree to the trades in antiques, in art, and in hobby goods, all of which are even larger than the antiquarian book trade.

THERE MUST BE A BETTER WAY -- The ABAA understands the states' desire to collect sales tax. However, we do not understand why they have chosen such a costly and inefficient route to achieving their goal.

While the sales tax laws and regulations of an individual state taken alone may be quite comprehensible, when one looks at 46 states together, the result is a system of Rube Goldbergian complexity. The burden of complying with such a system falls not only on business, but on the states themselves. Each state will have to process many times the sales tax returns it now handles, and its audit staff will increase sharply. The cost to the states will be considerable.

This could be ameliorated if several measures were taken. The most important would be to have a central agency, such as the Multi-State Tax Commission, be responsible for processing and auditing returns, and for collecting revenues and transmitting them to the states. With just one return and a uniform and consistent set of rules as to tax exemptions and filing requirements, the tax system would be barely workable for booksellers. We would prefer there be one sales tax rate for all out-of-state sales, though this will create inequities as some customers will pay more than they would to local merchants.

However, once we get into separate tax returns for each state, the complexity level explodes far beyond the capacity of most booksellers.

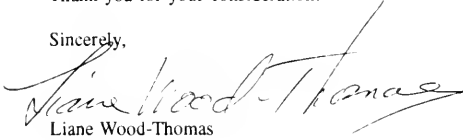
Even the single agency approach would be costly to the states and to businesses. A far better solution is that taken by the state of Maine which adds a line to its income tax returns for reporting out-of-state purchases. For those persons who cannot document such purchases, a small percentage is added based on an average determined from surveys.

The cost of such a system is minimal, as it only requires modifying existing tax forms and a few changes to the state's computer system. Compliance is, by its nature, very high, and the state has total control of the situation.

This could be done by every state right now without any action by Congress. It would not increase the cost to business, and it would not affect interstate commerce in any way.

Thank you for your consideration.

Sincerely,



Liane Wood-Thomas
Executive Director

for the Officers and Board of Governors of the
Antiquarian Booksellers' Association of America, Inc.

Exhibits

1. Directory of members of the Antiquarian Booksellers' Association of America
2. Selected book trade publications. Your attention is directed to the classified advertisements of "Books wanted" and "Books for Sale" which are an indication of the extent to which business is conducted by mail.

ASSOCIATED SCHOOL BOARDS OF SOUTH DAKOTA

PO BOX 1211 • PIERRE, SOUTH DAKOTA 57501
(605) 224-6281 • FAX (605) 224-6284 • INSURANCE (605) 224-5887

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LaRoy Helwig, 1st Vice President
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Carol Opp, Asst. Insurance Asst.

April 5, 1994

The Honorable Larry Pressler
United States Senate
283 Russell Senate Bldg.
Washington, DC 20510

Dear Senator Pressler:

A bill is being considered, "Tax Fairness for Main Street Business Act of 1994." This legislation would permit the collection of state and local taxes by out-of-state mail-order firms in order to prevent significant tax revenue losses and remove the competitive advantages now enjoyed by out-of-state businesses. As a representative of School Boards in South Dakota, I urge you to support this bill.

The losses to state and local governments resulting from untaxed mail-order sales are staggering. A 1992 study by the Advisory Commission on Intergovernmental Relations (ACIR) estimated the revenue potential for state and local governments is \$3.91 billion. This additional source of revenues for schools is vitally important. South Dakota relies heavily on sales tax to support public education. 56.8% of South Dakota sales tax is dedicated to school funding. This also appears to be the tax of choice to relieve the property tax burden in the future.

Two Supreme Court cases have addressed this issue. National Bellas Hess, Inc. v. Department of Revenue of Illinois held that sales or use taxes may not be imposed on a seller whose only "nexus" or connection with residents of that state is by mail or common carrier. Quill Corporation v. North Dakota held that the insufficient "nexus" argument was no longer applicable as justification for prohibiting collection of taxes, but confirmed that states were still prohibited from enforcing statutes requiring out-of-state sellers to remit state and local sales taxes. The Court referred the issue to Congress for resolution.

This bill is a fair and equitable resolution to the problem. We hope you will support this bill and look forward to your response.

Sincerely,

Gene Enck

Gene Enck
Executive Director

GE:kmb

MEMBER: National School Boards Association

OFFICIAL PUBLICATION: ASBSD Bulletin



4500 E. 10TH ST.
P.O. BOX 5428
SIOUX FALLS, SOUTH DAKOTA 57106-0001
PHONE (605) 338-3135
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DAYE AUSTAD
President & C.E.O.

April 11, 1994

Senator Larry Pressler
Senate Small Business Committee
428A Russell Building
Washington, D.C. 20510

Dear Senator Pressler:

This letter is to urge you and the other members of the Senate Small Business Committee to oppose Use Tax Bill S.1825, the so-called, "Tax Fairness for Main Street Business Act".

Austad's is a direct marketer of golf equipment and apparel based in Sioux Falls. We are one of the larger employers in the city, with over 500 employees whose job would be in jeopardy if this bill became law. The responsibility of keeping track of 6,000 different rates and 46 different sets of exemptions and filing procedures would be a tremendous burden to our company. The blended rate for each state is simply a smoke screen. I can assure you that under this provision many of our customers would be asked to pay a higher tax than they actually owe. They would refuse to do this, forcing us to make up the difference.

In addition, many of our customers are retired and elderly. They purchase from us for convenience and the fact that many of our products are not available anywhere else. Forcing them to perform complicated tax calculations every time they order by mail (for example, $6.25\% \times \$74.95$) would mean they would either calculate incorrectly or give up entirely.

The reason Austad's does not have stores in all 50 states is because we did not feel we could afford the bureaucracy of filling out the tax form in each state we opened. This bill would force us to become tax collectors for states that we receive no direct benefits from and have no political voice in.

For all of these reasons, I would urge the opposition to Senate Bill 1825.

Sincerely,

AUSTAD'S

Dave Austad
President/CEO

DA:cb

Vernon C. "Skip" VanDerhule

510 West City Limits Road
Post Office Box 791
Yankton, SD 57078-0791

605-665-2532 Res.
605-665-7413 Bus.
605-665-2288 FAX

April 7, 1994

Senator Larry Pressler
US Senate Small Business Committee
Washington, DC

Attention: Ann Rehffuss

RE: Senate Bill 1825
"Tax Fairness for Main Street Business Act"

Dear Senator Pressler,

Earlier this week, I talked to one of your aids, Ann Rehffuss, concerning Senate Bill 1825, that would allow states to collect sales taxes from "mail order" vendors. I do not think that the current language of the Bill is the correct way to go, and I wish to offer some suggestions.

My business history is that I operate a family trucking business. We also have a limited amount of retail sales.

Up until just the last few years, trucking companies were regulated and taxed by states they entered into in a manner very much like "mail order" vendors would likely find themselves in if SB 1825 were to be enacted in its present language.

Here are some of the difficulties trucking companies had:

1. No two states had the same form.
2. States varied widely in the rules and regulations.
3. The majority of "taxpayer/truckers" to any given state were out-of-staters, and as a result, truckers had little if any input into the tax laws and regulations being applied to them.
4. Each state was "entitled" to send an auditor; at the taxpayers expense; to audit any trucking company that entered their state.
5. Each state generally required at least one of not two surety bonds, depending upon the makeup of their revenue department.
6. Frequently regulatory authority had to be obtained from as many as three agencies in each state.

The result was administrative overhead that was very high for interstate trucking companies. I would fully expect that states would individually administer any authorization to tax interstate "mail order" vendors in a similar manner.

Senator Larry Pressler
 US Senate Small Business Committee
 Attention: Ann Reh fuss
 April 7, 1994
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A better route to follow is that which was taken with interstate trucking companies. Beginning a few years ago, partly as a result of initiatives by States, partly by demands from the trucking industry, and followed up with certain Acts of Congress, states either voluntarily joined, or were mandated to join, state compacts for the regulation and tax collection on activities of interstate trucking companies.

As a result, today if an interstate trucking company travels into just two states, the additional administrative costs to go into twenty states or even forty-eight states is only very slightly greater. The following benefits are also obtained:

1. All license registration is now done in the trucker's "base state"; which is usually the state in which your principal place of business is, although it is possible to select another state in which you do business as your "base state".
2. All motor fuel taxes are now collected by your base state.
3. All audit work is now done by your base state.
4. Only a single surety bond filed with the base state is now required.

Yes, there are some other set up procedures that can be long and complicated, but they are not repetitive. States have had to work together to work out differences between them, and now almost all repetitive work is uniform between states, as are the rules and regulations. The system is now much easier administratively to work in. The system still is not 100% perfect, because there are multiple compacts and no one compact covers all states, but it is never the less a very workable system.

At the end of this letter, I have attached a copy of the form we submit to the State of South Dakota covering motor fuel taxes for the states in the compact with our State. This will give you an idea as to how this system works.

A much better functioning system for the collection of state sales taxes from interstate "mail order" vendors is to mirror what has happened in the trucking industry. A number of benefits could be obtained if properly done:

1. A single form with a single filing to a single state covering all states into which sales are made. The states would collect and exchange amounts due to other states electronically.
2. A single set of rules could be developed by the states themselves working together.

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3. A single set of audit standards can be applied with a base state audit covering all sales to all states.

Certainly there would be some compromises that would have to be made, but the history of what has happened in trucking regulation and taxation suggests very strongly that states will be able to work these out.

The key to all this is that Congress require states to join a single national compact, and prohibit states from attempting to collect sales taxes outside the compact and its rules.

The two biggest items to overcome in such a system are simple, if states are mandated to participate in a certain way. Those two items are:

1. How do you determine if a sale is taxable if states vary both in what items are taxable, and as to what purchasers are tax exempt? If you use the point of delivery of the product as the determining factor, then every vendor and every auditor will have to be aware of every regulation in every state. That's going too far because it gets too complex. The answer is to determine taxability at the vendor's POINT OF SALE. This way, no vendor and no auditor would be required to follow more than one set of taxability rules. The rate of tax would be assessed based upon the POINT OF DELIVERY.
2. How do you determine taxability in a State that currently has no state sales tax, if that is where the vendor is located? All states have a revenue department, but those without sales taxes have no rules as to taxability, and in all cases, such rules are enacted by state legislatures. The answer is to again look at the trucking industry for an example. The "base state" does not have to be your "home state". The answer for vendors in states without state sales taxes is to require such vendors to select a neighboring state as their state for sales tax collection and administration purposes, and to require state compacts to accept such vendors.

The emphasis I am making is that Congress should not, in my opinion, give state a free hand to do what each state individually wants to do with interstate sales tax collection from "mail order" vendors. The result would be a mountain of paperwork and conflicting rules.

If a more simplified method, even if it mandates some compromises that some states may not like, it would appear to me that legislative passage is far more likely because the resistance

Senator Larry Pressler
US Senate Small Business Committee
Attention: Ann Rehfuess
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drops off from vendors because that "mountain of paperwork" gets drastically cut down in size.

There would be no need for Senate Bill 1825 to exempt "small" vendors, because we are now only talking about one form with one set of rules administered by the one state. There would be no need to limit tax returns to a quarterly basis because one form once a month is a lot less paperwork than 45+ forms once a quarter. (Let states agree among themselves as to the frequency of reporting.)

I have talked over this idea with several other parties, including representatives of retailers who support passage of SB 1825. Everyone I have talked to agrees that what I am suggesting has merit and will provide for a more workable situation for vendors and states alike.

I would urge a re-write of SB 1825 so that a single national compact between states is required for the interstate collection of interstate sales taxes from "mail order" vendors is established, using the example of the interstate compacts for trucking taxes as a guide.

Sincerely,

A handwritten signature in black ink, appearing to read "Skip VanDerhule". The signature is fluid and cursive, with a long horizontal stroke at the end.

Vernon C. "Skip" VanDerhule

vcv

Attachments

Senator Larry Pressler
US Senate Small Business Committee
Attention: Ann Rehfuess
April 7, 1994
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Alternative to Collection of State Sales Taxes from Interstate "Mail Order" Vendors

Objectives:

1. To cause the collection of States Sales Taxes by Interstate "Mail Order" vendors so as to place such vendors on equal footing with respect to sales taxes with local or "Main Street" vendors, and
2. To provide States with a uniform and enforceable method of collecting sales taxes on products delivered to customers within their borders from Interstate "Mail Order" vendors.
3. To provide a method of state sales tax collection, reporting and remittance by Interstate "Mail Order" vendors that:
 - (a) Does not allow any such vendors to escape such collection, reporting and remittance regardless of the size of the vendor,
 - (b) Places only a minimum of paperwork burden on all such Interstate "Mail Order" vendors regardless of sales volume or the number of States into which such vendors make sales.

References:

1. In recent years, States, acting on their own, and by various Acts of the US Congress, have entered into compacts for the assessment, collection, reporting and exchanges between states of fees and taxes in the motor carrier (trucking) industry, such that:
 - (a) Motor Carriers are making reports and remittances only to their base State of operation, such reports and remittances covering most or all of the States in which the motor carrier operates, and with the base State then collecting, compiling and remitting to other States in the compact monies due those other states from the motor carrier.
 - (b) The simplicity of which is that not only has the burden on individual motor carriers

Senator Larry Pressler
 US Senate Small Business Committee
 Attention: Ann Rehfuess
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of all sizes been minimized, but in many cases, the total paperwork burden on the motor carriers as well as on the appropriate State agencies has been significantly reduced from prior methods of tax reporting and collection.

2. Owing to the success of both voluntary and mandatory compacts for the collection of taxes and fees by States on motor carriers, such methods should be used as a model for the collection of State sales taxes by Interstate "Mail Order" Vendors.

Suggested Elements to Implement:

1. Congress should prohibit the collection of State Sales Taxes by States upon vendors who are delivering products from outside that State's borders, unless the State joins a compact of States, the purpose of such compact being for the collection of such taxes.
2. Said Compact of States shall institute a common form for the collection of State Sales Taxes, such single form containing space whereon it can be identified the amount of sales made by state, the taxable sales by state, the exempt sales by state, the tax rate for the particular state, and the tax liability thereby owing by the vendor to each State.
3. The vendor shall file such single form with the State wherein is located its principal place of business, and shall include payment of all amounts due to all States participating in the compact. The State receiving such funds from the vendor shall with like funds from other vendors, determine amounts due to other states based upon the totals of all returns, and then remit amounts due to other States to those other States.
4. States may only assess a single tax rate, that rate being either of the following: a). The base state sale tax, or b). If local option taxes are allowed, a composite of the base state and local option taxes that will closely approximate in-state tax collections.
5. All audits of vendors shall be conducted by the base State in which the return is filed.
6. The Compact of States, meeting together, may determine the frequency of filing of the tax returns by vendors.
7. In the event that the vendor's base State would be a State that does not currently have a State Sales tax, the vendor shall be assigned to the closest state to the vendor measured by miles which does impose a State Sales Tax.

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US Senate Small Business Committee
Attention: Ann Reh fuss
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8. It being recognized that all States are not the same with regards to what items are subject taxes, and that all States are not the same with regards to exemptions provided to certain purchasers of items that would otherwise be taxed:
 - a. The determination as to if a sale is taxable shall be made according to the rules of the state at the POINT OF SALE, but the tax shall be that in effect at the POINT OF DELIVERY.
 - b. If a vendor is located in a state without a sales tax, the determination of taxability of the sale shall be those rules of the state to which the vendor is assigned as that vendor's base state.
9. Interstate "Mail Order" vendors who in addition to their interstate sales maintain various retail outlets, shall in each case report the sales and taxes of such retail outlet to the State in which that retail outlet is located. No attempt shall be made to limit the number of State tax returns required for local outlets, nor shall the sales of such local outlets be combined with a return for Interstate "Mail Order" sales.

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US Senate Small Business Committee
Attention: Ann Rehffuss
April 7, 1994
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SOUTH DAKOTA

INTERNATIONAL FUEL TAX AGREEMENT TAX RETURN

VANDERHULE MOVING & STORAGE INC
VANDERHULE MOVING & STORAGE INC
PO BOX 797
YANKTON SD 57078-0797

MAIL TO: South Dakota Department of Revenue
Division of Motor Vehicles
P. O. Box 5055 - Sioux Falls, SD 57117

A RETURN MUST BE FILED EVEN IF NO MILES TRAVELED

Reporting Period: 1ST QTR. 94	
Return Due Date: 05-01-94	
License Number: SD 46-0273457	
CAR/CLAS	FUEL TYPE GAL/NO. L
LTD X DIESEL	
A. TOTAL MILES TRAVELED IN ALL STATES	
B. TOTAL FUEL CONSUMED IN ALL STATES	
C. AVERAGE MILES/ GALLON (LTD A DIVIDED BY LTD B)	

1	2	3	4**	5**	6**	7	8	9	10
JURISDICTION	TOTAL MILES	TOTAL TAXABLE MILES	TAXABLE GALLONS (Col 3 / Line 12)	TAX PAID GALLONS	NET GALLONS (Col 4 - Col 5)	TAX RATE	TAX DUE/CREDIT (Col 6 x Col 7)	INTEREST DUE .0100	TOT DUE/CREDIT (Col 8 + Col 9)
SD						0.1800			
AB						0.2334			
AR						0.1850			
AI						0.1800			
AZ						0.0800			
CO						0.2050			
FL						0.2360			
IA						0.2250			
ID						0.2100			
IL						0.2750			
IT						0.1600			
I2						0.1100			
KS						0.2000			
LA						0.2000			
MN						0.2000			
MO						0.1300			
MS						0.1800			
MT						0.2475			
NC						0.2200			
ND						0.1800			
NE						0.2600			
NV						0.2700			
OK						0.1300			
OR						0.0000			
TN						0.1700			
UT						0.1900			
WA						0.2300			
WI						0.2320			
WY						0.0800			

SUB TOTAL Total IFTA Miles
ADD Total Mileage all NON-IFTA States and Provinces
GRAND TOTAL Total all Miles Traveled (Same as (A) Above)

**When calculating your average miles per gallon round your decimal places only to 3 and

***When rounding gallons, round up in the nearest whole gallon (e.g. 52.5 = 53)

I CERTIFY THAT THIS REPORT IS TRUE, CORRECT AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

DATE

SIGNATURE/LICENSEE

TOTAL OF COLUMN 10	
PENALTY: 10% of Tax Due, or \$10.00 whichever is greater	
(+ or -) Balance Due / Credit from prior returns	5.43CR
TOTAL DUE	
TOTAL REMITTED	
TO CANCEL IFTA LICENSE, ATTACH IFTA PERMIT AND GIVE LAST DATE OF OPERATION	

NOTE:

LETTER FROM AMERICAN BUSINESSES

APRIL 13, 1994

THE HONORABLE LARRY PRESSLER
United States Senate
 283 Russell Senate Office Building
 Washington, DC 20510

Dear Senator Pressler: On behalf of the hundreds of thousands of American businesses (both for profit and not for profit) represented by our organizations, we urge you to oppose federal use tax legislation, the subject of hearings today before the Senate Small Business Committee.

"The Tax Fairness for Main Street Businesses Act" (S. 1825) would unfairly threaten the survival of thousands of mail order companies, hundreds of thousands of other national marketers and seriously damage many industry suppliers.

If passed, national marketers, the majority of which are defined as "small businesses," would be forced to shoulder the administrative burdens of collecting and remitting taxes for 45 states and the District of Columbia according to 6,100 different rates and 46 sets of exemptions and diverse compliance rules. In 1992, it would have amounted to compiling, preparing and filing over 428 returns each month, 5,136 returns a year or 21 returns on a daily basis for some companies. They would also be subject to time-intensive audits by more than 432 jurisdictions that administer sales and use taxes throughout the country.

The "in lieu" provision which provides businesses with the opportunity to collect taxes according to the average local tax rate is unworkable. Consumers should not be asked to pay more than they owe and responsible marketers would not ask them to. Likewise, computer tax collection systems are cost-prohibitive for small to mid-size firms above the \$3 million threshold and do not handle half of the compliance costs of collecting use taxes—the costs incurred from communicating tax instructions to customers and customer failure to pay the tax. The compliance costs alone would be 6.5 times greater for national marketers than for local retailers who deal with only one rate and one set of exemptions.

A dramatic loss in sales will result due to the increased complexity for customers in placing orders, loss of valuable catalog advertising space to explain tax rates and exemptions, and higher prices. Mail order companies estimate this loss to be as much as 20 percent which will be felt by thousands of suppliers including printers, list brokers, paper manufacturers, service bureaus, advertising agencies, etc. which support the direct marketing industry.

Revenue estimates offered by the bill's proponents are significantly inflated and do not account for taxes already being collected by direct marketers who have a presence in the state and for sales of tax exempt products. Further, these estimates do not take into account the various collateral effects. Sales of marketing companies and their suppliers would drop reducing corporate income and payroll tax receipts. Net sales tax revenue would also be lower for states due to added enforcement costs. Accordingly, this is a tax collection system that is ill-suited to the national marketplace.

This is an unfair, inefficient and unnecessary way to collect revenue. We urge you to actively oppose it.

Sincerely,

American Advertising Federation
 American Association of Nurserymen
 American Stamp Dealers Association
 Antiquarian Booksellers Association of America, Inc.
 Associated Credit Bureaus, Inc.
 Association of American University Presses
 Center for Science in the Public Interest
 Classroom Publishers Association
 Direct Marketing Association, Inc.
 Florida Gift Fruit Shippers Association
 Incentive Federation, Inc.
 Industry Council on Tangible Assets
 Mail Advertising Service Association, International
 Mailorder Association of Nurseries
 Newsletter Publishers Association
 Printing Industries of America, Inc.
 Promotional Products Association, International

LETTER FROM AMERICAN CONSUMERS

APRIL 13, 1994

THE HONORABLE LARRY PRESSLER
United States Senate
 283 Russell Senate Office Building
 Washington, DC 20510

Dear Senator Pressler: For more than 97.7 million American consumers mail order shopping is an indispensable convenience, if not a necessity. This is particularly true for such groups as the elderly, the disabled, rural families, working mothers and single parents, who by reason of physical condition, geographic isolation or lack of time, have few, if any other shopping alternatives for many products. On behalf of the millions of consumers represented by our organizations, we urge you to oppose federal use tax legislation, the subject of hearings today before the Senate Small Business Committee.

If "The Tax Fairness for Main Street Businesses Act" (S. 1825) is passed and direct marketers are forced to collect use taxes from out-of-state customers, mail order shopping would become confusing, cumbersome and expensive. The complexities of state tax laws would intrude into the lives of every mail order consumer, particularly the 35 percent who pay by check. The fate of the customer's order will depend upon his or her ability to properly answer such difficult questions as: What state and local tax is applicable? Is the item taxable? What is the tax rate? Are shipping and handling taxable? At what rate? How much should I write my check for? (Consider calculating $\$29.95 \times .04225$ percent—it's not easy.)

Furthermore, the administrative costs and inefficiencies imposed upon direct marketers would result in increased prices, decreased services and fewer choices for consumers. For many, mail order shopping provides access to products necessary for everyday life, as well as to health care products, medical equipment, and many other specialty items not otherwise available in retail stores.

Mail order opportunities enrich the marketplace providing greater choices to consumers. We urge you to oppose this unfair and inefficient means of tax collection.

Sincerely,

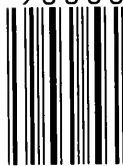
American Council of the Blind
 Disabled American Veterans
 Fight Back! Foundation for Consumer Education
 National Alliance of Senior Citizens
 National Association for Home Care
 National Association of People With AIDS
 National Grange
 Paralyzed Veterans of America
 Veterans of Foreign Wars
 World Institute on Disability

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